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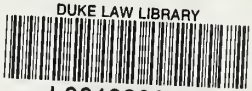

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THE CASE

OF

CAPT. WM. BROADER YORK,

COMMANDER OF THE

BRITISH BARQUE ALDEBARAN,

OF LIVERPOOL,

CONTAINING

THE PROCEEDINGS HAD BEFORE HIS HONOR GEO. W. LEWIS, RECORDER OF MUNICIPALITY NO. 3, OF THE CITY OF NEW ORLEANS, ON AN AFFIDAVIT MADE BY

RICHARD HARRISON CHILTON,

CHARGING CAPTAIN YORK WITH AN ATTEMPT TO COMMIT A BREACH OF THE PEACE.

AND, ALSO,

THE TRIAL OF THE RULE

GRANTED BY HIS HONOR THEODORE H. M'CALEB, JUDGE OF THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF LOUISIANA, ON THE FILING OF THE PETITION OF RICHARD HARRISON CHILTON, PRAYING FOR A LIBEL TO SEIZE THE SAID BARQUE, IN ORDER TO DISPOSSESS CAPTAIN YORK OF HIS COMMAND.

WITH AN APPENDIX.

BY AN OBSERVER.

NEW ORLEANS:

Printed for the Compiler, and Published at the Office of the "JEFFERSONIAN REPUBLICAN," under the St. Charles Hotel. For sale and to be had at that Office, and also at D. MORGAN'S Literary Depot, Exchange Place.

PRICE ONE DOLLAR.

1845.

THE FLOWERS COLLECTION

PREFACE.

To the Commaners of Vessels, both British and American, and the Mercantile public generally.

The compiler of this pamphlet having been urged by numerous individuals, whose interests and liberty are so deeply connected with the late investigation of the conduct of Capt. York, before the Recorder of the Third Municipality of this city, to collate the proceedings and circumstances of the case, now presents to those who desire *light* or information upon this matter, a plain statement of the facts connected with it, as they have come to his knowledge.

The compiler has endeavored to do no one any injury by either garbling statements made, or distorting such parts as might give him more license than he will avail himself of, in giving a ludicrous coloring in portraying some of the characters who bear conspicuous parts in this affair. Such is not his object; those who have made themselves obnoxious to ridicule, are welcome to such laurels,—all that he desires to do is, to speak of all as he has found them, "nothing extenuate, nor aught set down in malice."

The story speaks for itself—a young man (R. H. Chilton,) connected with reputed, wealthy and honorable merchants in England, who are engaged largely in the carrying trade between the Southern ports of the United States and Great Britain, states that his father, although his name is not on the register of the barque Aldebaran, is the commercial partner of the owner of that vessel, and in consequence of such connection he (R. H. C.) presumes upon the rights of the owners and claims to be the agent for the owner of this particular vessel, without producing the shadow of authority for such assumption. A difficulty arises between the commander (York) and his mate, (Scott)—forthwith Mr. Chilton interposes to displace the former and elevate the latter to command; in all which the British Consul co-operates.

In presenting this compilation, detailing the circumstances of this case, recourse has necessarily been had to the Records of the Courts, the newspaper press, and other valuable sources. No literary fame is sought after or needed: the testimony, on a calm perusal, *must convince all that there must be some hidden motive* for changing the supervision of the business of the vessel FROM THE SHIP-MASTER, TO WHOM IT HAD BEEN DELEGATED BY THE OWNER, to the merchant.

It will be observed that Capt. York was honorably acquitted by the Recorder—that there were no grounds whatever for the fears of Chilton, but

on the contrary, the pacific character of Capt. York was clearly established; if fault he had committed, it consisted in too mild a submission, in the first place, to the wrongs done him in asking him to yield that authority which the laws of nations, as well as the owner, gave him, by allowing another person to come on board his vessel and attempt to assume that command of which it was pretended he had been deprived. No power was competent to this, unless it might be that some most extraordinary conduct or gross violation of law on his part had been committed, (but of this no proof was even offered, much less shown, at any stage of the proceedings in the different investigations to prove any such allegation,) until he had delivered his vessel up at the place, and to those where, and from whom he had received and was to deliver her.

The manner in which this unfortunate commander has been used, partakes more of the character of persecution than of justice, as will be seen by the many means resorted to to harrass and vex him by the most annoying suits, and the repeated attempts of Chilton, after he had gone as far as it is presumed he deemed it prudent to go, in withdrawing his suit for the possession of the Captain's own chronometer, and for libel in the U. S. District Court, and winding up the climax by illegally and unlawfully carrying off the barque Aldebaran—this done, too, under the cover of night, and in presence of the British Consul, with other aiders and abettors.

The attention of the reader is particularly called to the proceedings in the U. S. District Court, and to the law quoted in the appendix, from which the Consul pretended his authority was derived to defend him in the course which he thought proper to pursue in the first place, by issuing his order to supercede Capt. York as commander.

The suit brought before his honor, Judge Jackson, Associate Judge of the City Court, by Richard H. Chilton, for the possession of the chronometer—the private property of Capt. York—came up for trial; but it is believed the evident injustice of this proceeding induced the plaintiff to withdraw the suit, on payment of costs, without further proceedings. It is deemed unnecessary to notice this act further.

Should the compiler have succeeded in calling proper attention to the relative rights of so large a portion of worthy men, who visit the ports of the United States from Great Britain, in reference to their duty to, and the British Consul's proper authority towards them,—thereby creating a better understanding of the position each occupies, and thus prevent the frequent collisions with British Masters and their Consuls, not only in New Orleans, but also in other cities; also, to curb the exercise of powers not delegated, or those acts which appear unnecessarily harsh or tyrannical,—then he will have accomplished all he desires.

Very Respectfully,

AN OBSERVER.

New Orleans, May, 1845.

PROCEEDINGS

OF THE RECORDER'S COURT—MUNICIPALITY NO. 3.

IN THE CASE OF

THE STATE OF LOUISIANA,

VS.

WILLIAM BROADER YORK.

A true copy from the Records of said Court.

STATE OF LOUISIANA,

Municipality No. 3 — Parish and city of New Orleans.

STATE *vs.* W. B. YORK, — INTENDED BREACH OF THE PEACE.

Affidavit of Richard Harrison Chilton.—Personally appeared before me, G. W. Lewis, Recorder of Municipality No. 3, of the city of New Orleans, acting as justice of the peace, duly commissioned and sworn, R. H. Chilton, who being sworn, does depose and say, that he is apprehensive, and has strong reasons to believe and fear that W. B. York is about to commit a breach of the peace, by intruding himself, and interfering with the command of the British ship "Aldebaran," of which the deponent is the agent in this city. Deponent has cause to apprehend that said York will create a disturbance on board of said vessel, unless he be arrested and bound to keep the peace; wherefore, he prays that said York be arrested and dealt with according to law.

(Signed,) R. H. CHILTON.

Sworn to and subscribed before me, in New Orleans, this 15th day of April, 1815.

(Signed,) G. W. LEWIS,

Recorder of Municipality No. 3.

WARRANT.

STATE OF LOUISIANA.

Recorder's Office, Municipality No. 3 — Parish and city of New Orleans,

To Captain E. Mazerat, or any of the men of the police of New Orleans, greeting:

Whereas, complaint has been made on the oath of Richard Harrison Chilton, before me, G. W. Lewis, Recorder of the third Municipality of the city aforesaid, that he is apprehensive, and has strong reasons to believe and fear that W. B. York is about to commit a breach of the peace, by intruding himself, and interfering with the com-

mand of the British ship "Aldebaran," of which he is the agent for this city, and that he has cause to apprehend that said York will create a disturbance on board of said vessel.

You are hereby commanded to take the body of the said W. B. York, and bring him with this warrant before me, to answer to the complaint; and should he not be found or seen within three days from the date hereof, you will not fail to return immediately this warrant, with what you have done endorsed thereon.

New Orleans, April 15th, 1845.

(Signed,) G. W. LEWIS,
Recorder of Municipality No. 3, of the city of New Orleans.

Officers' return to the foregoing.

Received 15th April, 1845; executed on the same day at 6½ o'clock, P. M., by arresting W. B. York. Returned same day.

(Signed.) JOSEPH HERNANDEZ.
V. HERNANDEZ.

BOND OF APPEARANCE.

State of Louisiana, City of New Orleans, Municipality No. 3. L. S.

W. B. York, as principal, acknowledges to owe the State of Louisiana, five hundred dollars, and Thomas Hill, a free-holder of the city, as surety, acknowledge to owe, each of them, to the State, five hundred dollars of their several estates, real and personal, to be levied to the use of said State upon this condition: that if the said W. B. York shall be and appear before the Recorders' Court of Municipality No. 3, of the city of New Orleans, to be held in the said city on the 16th of April, 1845; or if the said court should not be held on the day last aforesaid, then, on the first day afterwards, the said court shall be held, then and there aforesaid, to answer to the complaint brought against him for an intended breach of the peace, and not depart thence without leave of said court, and shall keep the peace in the mean time; then this recognizance shall be void, otherwise to remain in full force and virtue.

Taken and acknowledged at the city of New Orleans, the 15th day of April, 1845.

(Signed,) G. W. LEWIS,
Recorder of Municipality No. 3.

(Signed,) W. B. YORK,
THOMAS HILL.

RECORDER'S COURT—MUNICIPALITY NO. 3.

STATE *vs.* W. B. YORK.—INTENDED BREACH OF THE PEACE.

(FIRST DAY.)

Wednesday, April 16th, 1845.

This cause came on this day, for trial, R. H. Chilton appearing for the State, and Jacob Barker for the accused. The accused's answer being read and filed, on motion of Mr. Chilton, the cause was continued to to-morrow, at 12 o'clock, M.

ANSWER.

RECORDERS' COURT,—THIRD MUNICIPALITY.

State, vs. W. B. York. } The defendant appears, and for answer, denies that R. H. Chilton is the agent of the ship "Aldebaran," and calls on him to establish that allegation.

This defendant insists that he had not any intention of committing a breach of the peace; and requires that proof of such an intention be adduced.

The defendant insists that he is the lawful agent of the owner of the said vessel; that he is the commander of the said vessel, and as such commander, it is his intention to superintend the business of the ship; and to use all lawful means in his power to command obedience.

The defendant charges the said R. H. Chilton with unlawful and unauthorized interference with the discipline of said ship; with exciting rebellion and disobedience among the crew, in refusing to obey the orders of this defendant, as master of the said vessel, and thereby endangering the peace of the city. He, therefore prays to be dismissed with costs and damages.

(Signed,) JACOB BARKER,
Counsel for the defendant.

RECORDER'S COURT—MUNICIPALITY NO. 3.

(SECOND DAY.)

Thursday, April 17th, 1845.

State, vs. W. B. York. } This cause came on this day for trial; John Winthrop appearing for the State, and Jacob Barker and Zephyrin Latour for the accused, when, after hearing testimony, the cause was continued to to-morrow, at 12 o'clock, M., at the instance of Mr. Winthrop, for his client, Mr. Chilton, to produce his authority. The Court having ruled that it seemed to him proper it should be produced, inasmuch as the propriety of the Captain's conduct might depend upon the authority to remove him.

TESTIMONY TAKEN IN OPEN COURT, APRIL 17TH, 1845.

Cross-Examination by Mr. Barker.

R. H. CHILTON being duly sworn, deposes and says: that Thomas Hunter Holderness, of Liverpool, is the owner of the ship Aldebaran, on the register; he has general and particular letters of instructions from Mr. T. H. Holderness, concerning his vessels and captains; the name of the Aldebaran will appear in some form or other in said letters, but he is attending as agent for some twenty vessels for the same owners, and cannot particularly state what reference is made to the Aldebaran. Ac-

knowledges his signature and hand writing to three communications, addressed by him to Captain York, and marked No. 1.

Examination in chief by Mr. Winthrop.

Captain York called upon witness the first day he arrived—conversed and treated with him as the agent of the owners. Had a general conversation with him as to how his ship was; did not refer him to any person for freight or cargo, the ship being a chartered vessel. The Captain did not question his authority as the agent, until after this occurrence took place. His father is a partner of Mr. Holderness; is concerned with him in the ownership of vessels; cannot swear that his father is part owner of *this* vessel. *Is agent for his father*, in relation to all ships that come from that concern; has been particularly requested to attend to these vessels and captains, and has come out here for that purpose.

Question by Mr. Winthrop.—What first induced you to apply to the British Consul, in relation to this matter?

Answer.—I did not first apply to the Consul, *but the Consul applied to* ME *for an interview.*

Cross-Examined by Mr. Barker.

Mr. Holderness, who is the owner on the register of the ship Aldebaran, is the partner of his father. The *Holderness* of Holderness & Chilton, of Kingston upon Hull, *is not the owner of the Aldebaran.* The ship is a chartered vessel to the "Hull Flax and Cotton Mill Company;" has a letter from the owner informing him that, that company has chartered the Aldebaran; the letter now produced marked A are the sailing instructions of the Aldebaran; the signature is in the hand writing of T. Holderness, of Kingston upon Hull; the signature to the document marked B is that of T. Holderness, of Kingston upon Hull; the signature to the same document is that of Captain York.

Question by Mr. Barker.—Are Holderness & Chilton the accredited agents of the owners of the Aldebaran, in relation to the business of that vessel, when at Hull?

Answer.—The two houses, together with myself and my brother, are so mixed up in business, that I do not know exactly how to answer the question; as far as I know, Holderness & Chilton of Hull, have exactly the same authority I have.

Cross-Examination resumed.

I gave the Captain advice in regard to tradesmen, stevedores, &c., as he had never been here before; provided him also with dunnage for the vessel, and bought broken stowage on account of the ship. Am certain that the purchase of the dunnage was made before my interview with the British Consul, but do not recollect whether the broken stowage was purchased, or not, before that time; the broken stowage was about five thou-

sand staves. The first notice I had of the ship's arrival was a call from Captain York, who wanted his mate discharged. I referred him to the Consul.

Question by Mr. Barker.—Are you in the employ of Mr. Peter Maxwell?

Answer.—I am to be found there when wanted.

Cross-Examination resumed.

After Captain York had got two or three hundred bales on board, he asked me what he was to do, as the ship was standing still. I referred him back to Gordon, Wylie & Co., as they were bound to furnish the whole cargo. I referred Captain York to Gordon, Wylie & Co., before the ship commenced loading.

Communications marked No. 1, referred to in the testimony of R. H. Chilton:

"Captain York:
Sir—Meet me at the British Consul's, at 10 o'clock to-morrow morning; bring the officers of the ship and two of the boys with you. Yours, truly,
(Signed,) R. H. CHILTON.
April 4th.

New Orleans, 5 April, 1845.

"Captain York:
Sir—Her B. M. Consul having this day placed Mr. Scott upon the register of the Aldebaran, as Master of the said Barque, you will please give up charge of said Barque to him.
Yours, truly,
(Signed,) R. H. CHILTON.

Monday Evening,
On board the Barque Aldebaran.

Mr. York:

Sir—Notwithstanding the Consul's orders, I understand you have been on board this ship, interfering with Captain Scott in his duty. I have now to say, that you will be allowed to come on board this vessel once more only, which will be to allow you to take your property, clothes, &c. out of her; after that you will not be allowed over the gangway. I have also to request, that, as soon as possible, you will render me your accounts.
Yours, truly,
(Signed,) R. H. CHILTON.

Letter marked A, referred to in the testimony of R. H. Chilton:

Hull, 10 Jan'y, 1845.

Capt. W. B. York,
Of the Barque Aldebaran:

Sir—You will proceed with the "Aldebaran" to New Orleans, making of course the best of your way, and on your arrival there, address the ship to Messrs. Gordon, Wylie & Co., who will have instructions respecting the loading of your vessel. We are informed that at this season of the year it is advisable to make to the southward as far as the latitude of Madeira before you make much westing, especially if you can make good way to the south at

the same time, and you keep edging to the westward. On your arrival you will bear in mind that the house have the option of loading you for Hull or Liverpool, and when your ship has her ballast trimmed and your dunnage laid, you will send a notice to Gordon, Wylie & Co., as per annexed, and you must copy it in your Log-Book, and note therein the day and hour you delivered it to them, and to whom it was delivered; and you will not fail to send us, per Halifax steamer, and also by packet ship by New York, the price current last published when you gave notice. You will enquire if there will be much weight and of what kind, for your guidance in arranging your hallast for the most advantageous and proper stowage. Take care to preserve the cargo from damage as much as possible by matting the masts, pump well, bits, &c., and by putting old boards in the sides of the ship. The freight of cotton is agreed for, but for the freight of other articles you will have to agree, and this must be your guide: if cotton freights to Liverpool, per price current, are three farthings pr. lb., flour must be six shillings per barrel; linseed cake, in bulk, three pounds per ton, and in casks ten shillings more; and hogsheads of tobacco must be equal to ten barrels of flour; wet salted hides one shilling each hide (not bundle,) and in these proportions if cotton is higher or lower, per price current.

You will pay great attention to the pressing of the cotton, and if not done to your satisfaction object to it; if a small gratuity to the foreman will get it better done, promise them it, but of course give nothing if slovenly done, and complain to the merchants, and say, as the ship pays for it, you expect it to be done in the best possible manner.

Provision the ship for the homeward passage, that is with beef and pork. But as beef and pork will be moderate in England, you must see the quality is such that it will keep, before you take any very large stock. Take care and keep your sails and rigging free from chafe, and as we know studding sails are often neglected, let them be well looked to, as well as others. Let the provisions be served out in a proper manner, and let all have enough, but nothing must be wasted; and in all things try and keep your expenses down. And do not be above asking advice from men of more experience.

If Gordon, Wylie & Co. have no articles of weight for you, apply to Mr. Peter Maxwell, who may have some, but you are allowed to take weight from other parties, namely: lead, lard, seed or flour. Messrs. Gordon, Wylie & Co. will supply you with what cash you require for ship's use, and disburse your own money and procure the largest discounts you can.

Many accidents have occurred by vessels getting foul of each other, which, in our opinion, in nine cases out of ten is owing to want of a proper look-out. You will therefore insist on those who have the charge of the watch, from time to time, that they see a proper look out is kept, and no skulking allowed.

We again call your particular attention to not taking in any wet bales of cotton; if you find any such, (and you must see every bale,) let them be laid aside, and call the attention of the house that ships them to their condition, and if they say they are in proper condition and desire you to take them, get a written order to that effect; but if they refuse to give a written order, put in your Log-Book what passed, and note in the Log-Book their mark, and say how many of each mark are objected to, and sign such account at the time, as well as your mate; but we hope no such will be offered to you. From various attempts made to throw the damages upon the ship, you must perceive how necessary it is to be on the guard against these things.

We understand that old "flat boats" are to be purchased in New Orleans at a very low rate, and you must consult with Mr. Chilton as to the best method of procuring one at as little cost as possible, and with as little labor in breaking up, for the purpose of dunnaging the ship's sides, &c., &c.

We are, sir,
Yours, respectfully,

(Signed,) HOLDERNESS & CHILTON.

Document marked B, referred to in the testimony of R. H. Chilton:

HULL, 1st January, 1845.

MEMORANDUM OF AGREEMENT:

That William Broader York goes Master of the Aldebaran, of Liverpool, and that his wages are to be eight pounds per month. The cabin to be found in all necessary stores by the owners. The nett cabin freight to be equally divided between the Master and owners. The master to have one third cabin passage money. The master also to find his own chronometer, having one guinea and a half per voyage allowed him in consideration thereof; he

is also to be kept constantly insured from loss by the owners, for forty pounds upon his clothes and wages, to commence from 16th December, 1844. These conditions to remain in force so long as his services may be required, and no longer.

(Signed.) T. HOLDERNESS,
W. B. YORK.

RECORDER'S COURT—MUNICIPALITY NO. 3.

(THIRD DAY.)

Friday, April 18th, 1845.

State *vs.* W. B. York. } This cause came on this day for trial, Jacob Barker appearing for the accused, when, after hearing testimony, the cause was continued to to-morrow, at 1 o'clock, P. M., at the instance of Mr. Chilton, in order to allow him to consult counsel about producing his authority.

TESTIMONY TAKEN IN OPEN COURT—18TH APRIL, 1845.

Rebutting Testimony.

THOMAS HILL, being duly sworn, deposes and says, that he is acquainted with the hand-writing of Mr. Gordon, of the firm of Gordon, Wylie & Co., being shown a note signed by Alexander Gordon, addressed to Mr. Jacob Barker, marked C, says that the note is signed by Mr. Gordon.

JACOB BARKER, being duly sworn, deposes and says, that he saw Mr. Gordon sign the above note this day.

THOMAS HILL, called again—Is acquainted with Captain York—has known him seven or eight days—has seen him on board of the barque Aldebaran—his conduct on board was very peaceable and orderly—used no violence or threats towards the mate or crew—ordered the mate to order the crew to return to their duty, and ordered the light sails up to dry or to air, and to cover the stern boat with the sails—this happened about three days ago—the answer given by Mr. Scott was: "We do not obey your orders; we do not consider you as Captain of the vessel; we have authority from the British Consul to bundle all you buggars over the side, and if you do not go, I muster my force, the crew, and send you where such buggars ought to be."

After being thus provoked, the Captain manifested no violence, and walked on shore with Capt. Fisher, of the British ship "William Abrams," whom they also threatened with expulsion by force, as well as witness—the Captain (York) went into the cabin to get some papers, and a person by the name of Mason, second mate of the barque, threw off his jacket and hat and said, "Any buggar that entered the cabin would be tumbled out, as the purpose of the Captain and his two friends came for, was to drink the wine and porter that was left."

Captain Fisher and witness were not allowed to enter the cabin, but the second mate placed himself in the gang-way in a position of defence, and used at that place the above recited language. At other interviews on board of the ship, saw similar conduct and disobedience to the orders of Captain York, on the part of Scott, Mason and the crew. Was on board of the ship a few hours before the arrest of Captain York, with him. Captain York was not, to his knowledge or belief, on board subsequent to the period above stated—he never saw, on the part of Captain York, any conduct by word, deed or gesture, indicating a disposition to violate the peace. The condition of the ship was such that it was highly creditable to Captain York as a ship Master, she having been brought into port in the best condition. Witness has been a ship Master for twenty-five years.

Thomas Fisher, Master of the British ship "William Abrams," of Greenock, being duly sworn, deposes and says, that he corroborates the above testimony, (with the exception that he did not hear the orders given about the sails,) so far as relates to the peaceable conduct of Captain York and the condition of the ship, and also the language used by Scott and Mason—was in company with Captain York when he applied to a lawyer for advice as to the difficult position he was placed in. The lawyer advised Captain York to return on board of his ship and attend to his duties, and whatever opposition or provocation might be used towards him, to use no violence, but to rely upon the courts of this country for protection.

Captain Hill called again—Was also present, and corroborates the above testimony.

Captain Fisher, called again — Has seen Mr. Mason, second mate, in a state of intoxication on board of the ship two or three times. Had once to make application to his honor the Recorder to be allowed to pass unmolested, which protection was granted about a half an hour after it was asked. Witnesses' vessel is the next ship astern of the Aldebaran.

Richard Jones, master of the British barque "Ellen Bryson," of Glasgow, being duly sworn, deposes and says that he is acquainted with Captain York; was on board of the ship on the day Captain York was arrested; was on board between two and three o'clock, P. M. Left the ship with Captain York, and was in company with him when he was arrested. Captain York never used any threats or violence while on board of the ship to induce witness to believe that he had any intention to break the peace, or from which such a conclusion could be easily drawn by others. The condition of the ship is such, that it is highly creditable to Captain York; the disposition of Scott, Mason and crew, was to resist the authority of Captain York; saw Mason intoxicated once on board of the ship.

George Brock, master of the British ship Glentanner, of Aberdeen, being duly sworn, deposes and says that he is acquainted with Captain York; has known him for about ten days; accompanied him (Captain York) on board, and heard him give the orders about the sails; after the orders were given, the second mate seemed disposed to obey them, but said he dared not. Witness made a remark to Captain York about the locks being forced open; Mr. Scott said, "we opened them all, and we

cannot find the keys." Scott threatened to bundle witness by the neck out of the cabin of the ship. Captain Jones was with witness in the cabin; witness and others went on board at the request of Captain York. Captain York used no threats or violence in that interview, or at any other, to his knowledge. Captain York had to send for his keys, he believes, to the steward. Scott's conduct to Captain York was very abusive, he stood in the cabin, holding his arm up, and said, "I have only to call the ship's company aft, to bundle you all ashore. Mason was part of the time in the cabin and part of the time on deck, and was tipsy. Witness corroborated the testimony of other witnesses, as to the condition of the ship.

THOMAS STRINGER being duly sworn, deposes and says, that documents marked D. and E., now produced, are copies of two letters, signed by Mr. Jacob Barker, and delivered to the British consul by him; and that document F. now produced, is a letter from Mr. William Mure, her Britannic Majesty's Consul, to Mr. Jacob Barker.

Note referred to in Thomas Hill's testimony, and marked C:

Mr. BARKER:

Dear Sir—At your request I have to state that Captain York called at the office of A. Gordon, Wylie & Co., and reported the arrival here of the ship Aldebaran, on the 9th or 10th March, and we have no complaint to make of his conduct since.

Your obedient servant,

(Signed.) A. GORDON.

Documents D, E, and F, referred to in the testimony of Thomas Stringer:

DOCUMENT D.

NEW ORLEANS, 14th April, 1815.

WM. MURE, ESQ.,
H. B. Majesty's Consul, &c.:

Dear Sir—I have received your letter of this date. In reply to the allegation about Captain York "violating the 46th and 47th sections of the Navigation Act, 7th and 8th, Vic. Cap. 112, by which he has been guilty of a misdemeanor, and is liable to fine and imprisonment." (For the better understanding of these sections see appendix.)

I have to remark, that Captain York will be prepared to defend himself whenever called to an account before a competent tribunal, to pass on the matter.

As to his having been superseded, he does not admit that he has been, or that he can be superseded in the command of the Aldebaran, by any other authority than that from which he derived his command; to that authority he is prepared to submit; and if, as you say, you have acted with the sanction of the accredited agent of the owner, it would seem to be incumbent on such agent of the owner to produce his authority; beyond which it was not my intention to ask for any explanation.

To prevent the possibility of a mistake, Captain York wishes you to be informed that his instructions are precise as to all the points of his duties; the observance of which disaffected a portion of his crew, in which instructions is to be found the following sentence:

"*On arrival there, address the ship to Messrs. Gordon, Wylie & Co., who will have instructions respecting the loading of the vessel.*"

No intimation is given of any other agent, consequently he cannot recognize any other person as the accredited agent of his owner, without the production of credentials duly authenticated. Mr. Gordon states that he has not sanctioned any interference with his command; that he is not knowing to any irregularities on the part of Captain York; and that so far as he knows, he has performed his duties faithfully as commander of the Aldebaran.

I am, dear sir,

Your most ob't. servant,

[Signed.] JACOB BARKER.

DOCUMENT E.

NEW ORLEANS, 14th April, 1845.

WILLIAM MURE, ESQ.,
Consul of H. B. Majesty, Victoria,
Queen of Great Britain, &c., &c.,
At New Orleans:

Dear Sir—Captain York, commander of the barque "Aldebaran," has called upon me to aid him in restraining the interference of certain persons, in the discharge of his duties as master of said vessel; and from a letter received by Captain York from Mr. R. H. Chilton, you are referred to, as authorizing the proceedings complained of.

The friendly relations which have always subsisted between us induces me to notify you of Captain York's determination to apply to the courts of the United States to restrain all interference with his authority as master of said vessel, and to redress the wrongs which he thinks have been done him—before I proceed to take out writs for the arrest of such trespassers as may be found on board, or such of the crew as may refuse obedience to his orders.

Should any other person than Captain York have authority to represent the owner of the vessel, I presume the whole affair can be amicably settled, the first step towards which will be the exhibition of such authority.

Very respectfully,

Your ob't. serv't,

(Signed.) JACOB BARKER.

DOCUMENT F.

BRITISH CONSULATE, New Orleans, April 14th, 1845,

JACOB BARKER, ESQ.,
New Orleans:

Dear Sir—I have received your letter of this date, relative to the British barque "Aldebaran," and notifying me that it is the intention of Captain York to apply to the courts of the United States to restore his authority as master of said vessel.

In reply thereto, I have merely to state, that in superseding Captain York in the command of this vessel, for irregularities in his conduct, and for violating the 46th and 47th sections of the Navigation Act, 7th and 8th Vic. Cap. 112, by which he has been guilty of a misdemeanor, and is liable to fine and imprisonment, I have acted with the sanction of the accredited agent of the owners, in this port, and I must decline any farther explanation regarding my authority, as H. M. Consul, for dismissing, or sanctioning the dismissal of a British captain.

I am, dear sir,

Your most obed't serv't,

(Signed.) WM. MURE.
H. B. M. Consul.

NOTE, BY THE COMPILER.—For the proper understanding of the foregoing correspondence, document E. should be read first, then F., and lastly D.; they would have been so placed, but for the reason, that they were otherwise arranged in the Record, of which this purports to be a faithful copy.

RECORDER'S COURT—MUNICIPALITY NO. 3.

(FOURTH DAY.)

Saturday, April 19th, 1845.

State *vs.* W. B. York. } This cause came on for trial this day, Jacob Barker appearing for the accused, when the following testimony was received and proceedings were had; a "*subpœna duces tecum*" having been issued against Edward Mason, to produce the Log-Book of the Aldebaran, the said Mason came into court with said Log-Book.

TESTIMONY TAKEN IN OPEN COURT, APRIL 19TH, 1845.

THOMAS STRINGER, being duly sworn, deposes and says, that Captain York's chronometer was restored to him by Mr. Chilton, it having been taken from him by a process of Judge Jackson's court, at the instance of R. H. Chilton, representing himself as the agent of the barque Aldebaran, which suit was dismissed at the request of Mr. R. H. Chilton. Witness accompanied R. H. Chilton to his office, who gave him the chronometer.

THOMAS FRAZER, Master of the British bargue "Pollock," of Glasgow, being duly sworn, deposes and says, that he has heard the testimony heretofore given, and confirms the testimony of the other witnesses, as to the peaceable conduct of Captain York, the good condition of the ship, and the abusive deportment of Scott and Mason to Captain York, when he went on board. Was on board the afternoon of the day Captain York was arrested, and Mr. Chilton and the British Consul were there at the same time. Captain York's conduct in that interview was very civil and very quiet in every respect. Left the ship before Captain York—about two hours after that time, he was informed by Mr. Cameron, (a merchant on the Levee,) that the police officers were seeking Captain York. Captain York was then in company with witness and others in the street. Captain York proceeded down Port street, and met the officer, who was on horseback, just above Capt. Hill's house; the officer told Capt. York that he was his prisoner; another officer came up immediately with a warrant, and they took him away to prison. Witness saw Captain York in prison, locked up with other prisoners—from the dirty apparel of those in prison he concluded that they were sailors.

EDWARD MASON, second mate of the Aldebaran, being duly sworn, deposes and says, that the book shown to him is the Journal or proceedings of the log of the Aldebaran—a portion of it is written by himself. Under date of Thursday, 27th February, 1845, the last half page shown him is in his own hand-writing. Under date of Sunday, the 2d March, 1845, the last half page shewn him in his own hand writing, with the exception of the signature of "W. B. York, Master," in both instances. Under date of Thursday, 13th March, 1845, all there is under that date, with the exception of the signature of Captain York, is in his own hand-writing.

The logs were not made up at the time of their dates, but as soon after as he had leisure; sometimes a day or two after.

Questioned by Mr. Scott, (of the Aldebaran.)

What he has written in said Log-Book is not true, according to his notions—some part of it was written on a slate, and ordered by Captain York to be copied in the Log-Book—on the 28th February, 1845, at about 4 o'clock, P. M., he copied in the record what is said to have happened on the 27th of the same month.

Examination continued by Mr. Barker.

The entry under date March 11th, 1845, which states that Mr. Scott was off duty and on shore without leave was untrue—the entry under date of Sunday, the 2d March, 1845, which states that "James Scott said he would do as he liked for the Master," is incorrect; the words used on the occasion were as follows: "*He should speak to whom he liked.*" Witness, on being requested to look over the book and see if he could find any other errors, and particularly on the day's work heretofore referred to, says that he does not find any other error, nor does he at the moment recollect of any other. Mr. Scott was put off duty as chief mate on the 27th February, 1845, and continued off duty until he left the barque here in New Orleans. Witness left the Recorder's Court of his own accord, after he had brought the Log-Book in company with Mr. Scott—had no conversation with Mr. Scott as to the testimony he was to give in this matter. Witness being shown the keys of the Aldebaran produced by Captain York, and being asked if he recognized them, said that he only recognized two keys, one of them as the key of his own berth, and the other as that of the Captain's room.

Captain York offered the testimony of Henry Varian, chief mate of the British ship Bradshaw, of Liverpool, to prove the intemperance of Mr. Scott, which the court ruled out as not pertinent to the case.

EXTRACTS FROM THE LOG.

Thursday, 27th February, 1845, 5 *A. M.*

The Master came on deck and found the mate keeping the ship off her course, asked him the reason; the mate then began to abuse him—Master ordered the mate to make the lee studding sails up; mate said he would not, he would be d—d if he would; continued to abuse the Master and left off duty.

Sunday, 2d of March, 1845.

James Scott endeavoring to keep the crew in conversation; Master told him not to keep the people from their duty; James Scott said he would do as he liked for the Master.

Tuesday, 11th March. 1845.

James Scott off duty and on shore without leave.

Thursday 13th March, 1815.

Throughout these twenty-four hours thick, cloudy W. with heavy rain; employed trimming and levelling the ballast and getting the water casks upon deck; carpenters as yesterday; the Master applied to the Consul to take James Scott out of the ship, as he had done no duty on board since the 27th of February, at 5 P. M. James Scott took all his clothes out of the ship.

Here the evidence closed.

Mr. Barker then addressed the Court—animadverted on the testimony offered, and in the most conclusive manner showed *that not one particle of evidence* had been brought forward, or even attempted by Mr. Chilton to sustain the charge he had made against Captain York, and demanded the discharge of his client. He said of Mr. Chilton, that when he found the current of public opinion—of every sensible ship master, both British and American, or nearly so, arrayed against him for his ridiculous course in this whole affair, and every effort in his power had been made, which, if successful, would have blasted the fair fame of an honest, upright, and capable young Captain—he abandons the field, by asking first to be allowed to withdraw his charge—then that being denied, he makes no other appearance, *and fails to produce the authority* which he had undertaken on two different occasions to do. In place of which, he appears in a morning newspaper, intimating that this court is not a competent tribunal! to call on him to show his authority to act as agent. Here an unparalleled case is presented; an individual claims of another to surrender to him valuable property of which he is in lawful possession, belonging to a third party; his authority is called for, and refused; violent possession is then attempted, resistance to such an act apprehended, when the power of this Court is invoked on the oath of this pretended agent, who describes himself in such oath, as agent of the Aldebaran; his agency is disputed, and the Court of his (Chilton's) own selection requires him to produce it. To object to the right of the person in possession, to see the authority of another claiming a right to exercise control over property in his especial charge, before he surrendered the property of a third party, or to the Court, to see the authority before it recognized the agency, is too absurd to need argument.

This, if nothing else were wanting, would show that such an act of oppression had not been heard of in this country—in fact said Mr. B., it is monstrous! He then went on to show the manner in which this pretended agent had acted throughout the whole affair—an unlawful interference without authority—*men under his authority threatening to break the peace themselves if Captain York did not submit*—go and take an oath, and put the oppressed Captain into a loathsome prison, lest they should provoke him to break the peace. When your Honor considers that the British Consul had been notified that Captain York would rely on the Courts of the United States to repress the interruption to his command, that Mr. Chilton had been an eye-witness to, and the lamb-like forbearance of Captain York, pursuant to the advice of his counsel, under the most aggravated provocation, the conclusion will be irresistible that the oath

taken was a very extraordinary one; and the attempt to impeach the Log-Book so utterly failed, that the witness (Mason) became an object of pity. He (the witness) said the record, *written by himself, was untrue*, for this, that it stated "James Scott, he said he would do as he liked for the Master," when it should have said, that *James Scott said he should speak to whom he liked;* and that, after a close investigation, *that he could not find any other errors.*

Mr. Barker here read the letter of instructions to Captain York from the owners; he alluded to its forcible and able style, its explicitness, not a point but what was treated upon, for all contingencies. Messrs. Gordon, Wylie & Co. were appointed in terms the consignees, who say that Captain York reported himself to them on his arrival, and that they had not any complaint to make: the Captain is required to pay his own disbursements, he is to conduct the correspondence, and attend to all the business of the ship, which is detailed with great precision—no room left for doubt on any point—more intelligent, able and proper instructions from an owner to his Captain, had not met his (Mr. B's.) eye.

Mr. Barker then referred to the evidence to show the strictness with which he had carried out his instructions to the very letter. The Captain was ordered to allow "no skulking;" he comes on deck and finds, at the dead hour of the night, that the Mate, having charge had allowed her to be put several points off her course; of this he complains, and justly so, particularly as his ship being then among the West India Islands, was in a dangerous part of her passage. The Mate becomes abusive, when he is told to go off duty; this was the head and front of the offence of Captain York; he no doubt preserved strict discipline among his crew, as he was commanded to do. And here said Mr. Barker, I undertake to say that no Captain, and particularly a young man, the first voyage as commander could carry his orders into effect without creating a rebellious spirit on the part of the crew—there is something in the human breast that chafes against authority, and especially against usurpation, and although sailors are the most generous class of men on earth, they would be the most likely to rebel. Mr. Barker said he spoke from experience, he was born on an island and had often snuffed the sea breeze and dodged the salt water spray, and although he had left his blue jacket and trousers on the ship's forecastle when a boy, yet he then contracted an attachment for nautical men which has never forsaken him: he looked upon his client as of his clan, and an honest Jack Tar was his admiration.

Mr Barker then went on to shew further that Captain York had obeyed his orders. He was instructed, in case of necessity, to go to Mr. Richard Harrison Chilton for advice about the purchase of an *old flat-boat*, for dunnage. The purchasing of dunnage was the only thing done by Chilton, before the attempt was made to supersede Captain York, according to his own statement, consequently every service contemplated to be done by Mr. C. had been performed.

As to the apprehensions which he had heard expressed by many British ship-masters, in consequence of the British Consul's statement, that he (the Consul) had "as much authority over a refractory captain of a vessel

as he had over a mate, a sailor, or an apprentice," and "that England did not make one law for the captain and another for the sailor;" he begged to say that there was nothing to fear, and that there was no occasion for feeling sensitive, because the learned Consul had made such an exposition of his supposed powers.

A moment's reflection will tell them that Her Britannic Majesty's Consul *has not* a particle of authority over either. His whole authority, under which he acted in this case, as quoted by himself in his letter, in evidence, and which is contained in the 46th and 47th sections of the 7th and 8th Victoria, Cap. 112. Mr. B. read those sections, and said that they had not the slightest allusion to such a case as this, and gave him (the Consul) no more authority over a master, than they do of the command of this city. A more unfortunate reference could not be made. The sections quoted are plain and easy of comprehension; and the whole bearing is, for the protection of the crews of British vessels against the tyranny of the captains. Further, what is the Consul's authority under that law? why this, *merely to with-hold permission from the captain, who may wish to discharge his mates, seamen, or apprentices*, and if such captain should discharge either in a foreign port, or at sea, *without such permission*, then the captain subjects himself to a penalty and imprisonment *on proof* made before the Courts of the British realm; the law quoted, speaks of his authority to send offenders home to be tried—but we have no treaty stipulation to which he can invoke the aid of our Courts, that of 1815 having expired, and the "Ashburton" Treaty only provides for the return of fugitives from justice from the British dominions. The British Consul has no authority to punish *even one of the crew* should they misbehave. The captains have this power, and they alone, subject to punishment as criminals, for abusing their powers.

When complaint is made to the Consul, those very sections dictate his duty—*he must call into the aid of such commander* (needing assistance to subdue mutiny or insubordination, &c.,) the action of the American police, and courts of law, to compel obedience. He has then no such authority as has been assumed by him, and he stands condemned b ythe very act under which he thought to shelter himself. The laws of England make American Courts proper places to apply for redress. Mr. Chilton in a published card, says he is willing to produce his authority when called on by a *proper tribunal*, if he did not consider this place PROPER, why apply to it? But, said Mr. B., let us see what he says himself. (Mr. Barker here read a card from him in the Bulletin of Saturday.) Mr. B. continued: the British laws, said he, makes it the duty of Consuls to protect seamen, and to provide for their return when left destitute in a foreign port, but contains no one clause giving them the power to inflict punishment on an apprentice, much less on a seaman, mate, or captain!

Already has this rash act produced its excitement in our community, but let there be fifty lashes inflicted on a British sailor, by order of a Consul, and Her Majesty's representative will soon see such a blaze of indignation burst forth throughout England, as would annihilate him the moment he should return home, if he should dare attempt to go there.

Mr. B.. denied that he possessed the least shadow of authority for changing the commander of a British ship adversely to her owners; even if the ship was in London, at the foot of the Throne, the whole power of the government is not equal to the task! If the captain had done any wrong there were means of punishing him by proper legal process. No such thing had been attempted—no, the supposed sovereign power of Her Britannic Majesty's Consul here, led him to be the judge of the case, "I am, and there is none else," appears to be his determination, and under these influences, exercises a power such as never was heard of in Draco, nor the most tyrannical powers of the old world. No punishment of a master can take place for any alleged misconduct or violation of law, without a trial before his peers, nor could they in such case appoint another to command.

The same regulations govern the Consuls of the United States, and should such a thing occur to one of them, such conduct could not be attempted, or if so, sustained; even the President of the United States, if on the spot and applied to, could not do it.

Mr. B. here related the following anecdote: — The Emperor of Russia when on an aquatic excursion took a fancy to the ship United States, then in the roads of Cronstadt, which had been sent there by him (Mr. Barker), and offered the Captain fifty thousand dollars for her, which the Captain agreed to take *on condition that he could get clear of a freight* he had agreed to take for Bordeaux. The Emperor sent his Minister to negotiate with the merchant, who agreed to release the ship for a bonus of thirty thousand rubles, giving *three days'* time for the Admiralty to examine the ship and conclude the bargain; their report was favorable; the Minister notified the merchant, on the *fourth* day, that he would pay the thirty thousand rubles, *when the merchant declined*, saying, *that the time allowed for an answer had elapsed.* The Minister reported to the Emperor of that, which he considered a great indignity, expecting an Ukase commanding her surrender; in place of which the Emperor said "*individual rights must not be invaded*, tell the Captain to complete his loading for France, go there, deliver his cargo, and collect the freight for the benefit of his owners, and proceed to the United States, or otherwise use the ship as he thought proper, until the navigation should the next season be free from Ice, when he could return and deliver the ship; he would then cause her to be received and the aforesaid price paid for her" all of which was done; in relation to which an incident occurred indicative of the Emperor's quick perception, promptness of action, and great regard to the convenience of individuals with whom his nation dealt. He, when on another aquatic excursion, perceiving that the Captain *had not been paid*, signed a warrant on the treasury for the price agreed upon, on board the steam boat, and caused it forthwith to be handed to him.

Mr. B., after a few more remarks, and claiming Captain York's discharge, and the liability of the prosecutor and his confederates to be taken up for disturbing the peace themselves, then submitted the case to the court for its decision.)

DECISION OF THE COURT.

There being no just cause of apprehension of an intention on the part of the accused to commit a breach of the peace, proven in this case, the complaint is therefore dismissed, without prejudice to the rights of the parties.

(Signed,) G. W. LEWIS, Recorder.

19*th April*, 1845

CLERK'S CERTIFICATE.

I, JOHN EUGENE LAYET, Secretary of the Recorder of Municipality No. 3, of the city of New Orleans, do hereby certify, that the above and foregoing twenty-five and a half pages, do contain a full and complete transcript of all the proceedings had, as well as of all the testimony adduced on the trial of the cause wherein the State of Louisiana is complainant and W. B. York is defendant, instituted before said Recorder, and now on the records of said office.

In testimony whereof I have hereunto signed my name and affixed the seal of said Court, at the city of New Orleans, this 21st day of April, in the year of our Lord one thousand eight hundred and forty-five, and of the Independence of the United States the 69th year.

{ L. S. }

(Signed,) J. E. LAYET, Secretary.

RECORDER'S CERTIFICATE.

I, GEORGE WASHINGTON LEWIS, Recorder of Municipality No. 3, of the city of New Orleans, do hereby certify, that John Eugene Layet is Secretary of the Recorder of Municipality No. 3, of the city of New Orleans, and that the signature "J. E. Layet, Secretary," to the foregoing certificate is in the proper hand-writing of him the said Secretary; to his official acts as such, full faith and credit are due and owing; and I do further certify, that his attestation to the foregoing certificate is in due form of law.

Given under my hand, at the city of New Orleans, this 21st day of April, 1845.

(Signed,) G. W. LEWIS, Recorder.

NOTE.—Such words and sentences as are inserted in *parenthesis* in the foregoing are not in the copy of the record from which this is taken. OB.

It will be seen from the foregoing proceedings that the attempt to cast odium on the character of Captain York, by imputing to him the charge of being suspected as contemplating a breach of the peace, was a signal failure, and that he passed through that ordeal triumphantly; this, the reader will discover, was but the commencement of the trials in store for him. The next step taken to accomplish the designs of Mr. Chilton, to get the vessel away from his command, was a suit in the United States District Court, libelling the barque Aldebaran, setting forth that Captain York unlawfully detained the vessel from her owner, represented by his (so styling himself) accredited agent—but here again, as in the Recorder's Court, the proof of such authority was not produced by his accuser, and although it will be discovered that the barque was finally carried off, in defiance of law, and contempt of the authority of the Court—*and under the command of Benjamin Turner, late Mate of the British ship Provincialist, of Londonderry*, still Captain York was again successful, for the rule was dismissed by the Court, and soon afterwards his persecutors rather than go further into the matter, obtained an order from Judge McCaleb, giving them leave, on payment of costs, to dismiss the libel suit.

It is thought proper by the compiler, to call particular attention to the following certificates of old, respectable and well known ship masters. To dilate upon their contents would be superfluous, they speak for themselves, and so speaking say volumes in favor of a young commander. But to the certificates, comment is unnecessary.

CERTIFICATES OF SHIP MASTERS

AS TO THE APPEARANCE AND CONDITION OF THE BARQUE ALDEBARAN, AND THE CONDUCT OF CAPTAIN YORK.

NEW ORLEANS, April 12th, 1845.

Having been called upon by Captain W. B. York. of the Barque "Aldebaran," of Liverpool, to survey her and give my opinion as to her state, I, in conjunction with other Masters consider her to be in a state highly creditable to the aforesaid W. B. York; and having been in his company frequently since his arrival in the port of New Orleans, I believe him to be a sober, persevering, and competent ship master.

(Signed,) JOHN BROWN,
Master of the ship Gertrude of Liverpool.

We, the undersigned, British ship masters at present in this port, do hereby certify, and will hereafter in any other port corroborate the contents of the preceding certificate of Cap-

tain John Brown, Master of the British ship Gertrude, as regards the character, conduct, and competency of Captain W. B. York.

NEW ORLEANS, the 14th April, 1845.

(Signed,)

R. SEDGWICK, ship Coromondel of Liverpool.
GEORGE BROCK, ship Glentanner of Aberdeen.
WILLIAM BACHE, ship Yorkshire of Bristol.
THOMAS FISHER, ship William Abrams of Greenock.
PETER CLARK, barque Agneda of Greenock.
JAMES ADAMS. ship Canada of St. Johns.
PETER BARCLAY, ship Elizabeth of Belfast.
SIMON GRAHAM, barque Grampion of Liverpool.
JOHN SPENCER, barque Pursuit of Liverpool.
RICHARD E. JONES, barque Ellen Bryson of Glasgow.
JOHN FLOOD, barque Susan of Liverpool.
JAMES BROWN. ship Gossypium of Liverpool.
A. MCPHERSON, barque Eleanor of Glasgow.
JAMES RODGER, ship Araminta of Belfast.
ALEXANDER HOSSACK, barque New York of Greenock.
THOMAS FRAZER, barque Pollock of Glasgow.
DAVID WHITE, barque Broom of Glasgow.
THOMAS BROCKLEBANK, ship Columbine of Liverpool.
GEORGE WELCH, barque Lord Sandon of Liverpool.
HENRY A. VARIAN, (mate) of the ship Bradshaw do.
D. WILLIAMS, ship Provincialist of Londonderry.
J. DAVIDSON, ship Intrinsic of Belfast.
A. CLARKE, ship Amoy of Belfast.

This is to certify that on this day, in our presence, on board the British barque Aldebaran, Captain W. B. York directed EDWARD MASON the second mate of said barque to bring the light sails on deck and air them, to cover the stern boat with a sail, and make up the quarter deck awning, whereupon he refused to do so, and said he dare not obey the orders of Captain York, and was very abusive. Captain York attempted to go into the cabin when a person by the name of JAMES SCOTT interposed to prevent the same, and threatened to put Captain York and the subscribers out of the said vessel if Captain York persisted in directing the conduct of the business of the ship, and the said Edward Mason appeared to be the instigator of the disorderly conduct we witnessed on board of said vessel.

NEW ORLEANS, 14th April, 1845.

(Signed,) THOMAS FISHER,
Master of the ship William Abrams.

(Signed,) RICHARD E. JONES,
Master of barque Ellen Bryson.

(Signed,) GEORGE BROCK,
Master of ship Glentanner.

The attention of the reader is now directed to the proceedings which took place in reference to the libel case.

DISTRICT COURT OF THE UNITED STATES

FOR THE

DISTRICT OF LOUISIANA.

Thomas Hunter Holderness vs. British barque Aldebaran *and* William Broader York.	United States District Court.

PROCEEDINGS IN OPEN COURT.

Thursday, 24th April.

PRESENT:—HIS HONOR THEODORE H. M'CALEB, JUDGE.

COPY OF LIBEL.

To the Hon. Theodore H. M'Caleb, Judge of the United States District Court, for the District of Louisiana:

The libel and complaint of Thomas Hunter Holderness, of Liverpool, England, merchant, against the British barque Aldebaran, whereof William Broader York late was, and now pretends to be, master, her tackle, apparel and furniture, and against the said York, of Hull, England, but now, together with the said barque, within the jurisdiction of this honorable Court; and also, against all other persons lawfully intervening for their interest in the said barque, in a cause of possession, civil and maritime.

And, thereupon, the said Holderness alleges, and articulately propounds, as follows:

FIRST.—That the libellant is the sole and registered owner of the said barque, Aldebaran, a vessel of about six hundred and nine tons, British measure, now lying in the port of New Orleans, and for some time past has had the possession and ownership thereof, and ought now to have possession and control of the same.

SECOND.—That the possession of the said barque is now wrongfully with-held from the agent of the libellant, here present and representing the owner, to-wit: Richard H. Chilton, by the said William B. York, alleging himself to be entitled to the possession thereof, as captain, although the said York has been long since deprived of his command, and superseded for gross, violent, improper and illegal conduct, by the action of said Agent and William Mure, Esq., British Consul at the port of New Orleans, acting in his official capacity.

THIRD.—That the said Richard H. Chilton is the true and lawful agent of the owner, and as such, duly authorised and empowered to act in the premises.

FOURTH.—That Messrs. Gordon, Wylie & Co., merchants of this city, are now loading the said barque, and have notified the agent of libellant that they will protest against her as unseaworthy in case the said York should proceed in her to sea, as captain or commander.

FIFTH.—That the action and jurisdiction of this Court are invoked herein, *at the instance and request* of the said William Mure, representing the British Government at the said port of New Orleans.

SIXTH.—That all and singular the premises are true and within the Admiralty and Maritime jurisdiction of this honorable Court, in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore, the libellant prays that process, in due form of law, according to the course of Courts of Admiralty and Maritime jurisdiction, may issue against the said barque Aldebaran, her tackle, apparel and furniture, now lying in the port of New Orleans, as aforesaid; and that the said William Broader York, and all other persons having, or pretending to have any right, title or interest in the said barque, may be cited to appear before this honorable Court, and to show cause why possession of the said barque Aldebaran should not be delivered to the libellant, or his agent, the said Richard H. Chilton, as entitled to the sole possession thereof, against the said William Broader York, and all others lawfully intervening; and that this honorable Court would be pleased to decree the possession of the said barque to the libellant, or to his said agent Richard H. Chilton, and to administer such other relief in the premises as shall to law and justice appertain; and also, to condemn the said York, and all persons intervening for their interest in the said barque, in costs.

(Signed.) R. H. CHILTON, *Agent.*
WINTHROP,
Proctor for Libellant.

Personally appeared, Richard H. Chilton, Agent for the libellant, who being sworn, saith that the facts stated in the foregoing libel are true.

Sworn to and subscribed, this 22d day of April, 1845.

(Signed.) N. R. JENNINGS, *Clerk.*

COPY OF CITATION TO CAPTAIN YORK.

UNITED STATES DISTICT COURT—SITTING IN AND FOR THE DISTRICT OF LOUISIANA.

To William B. York, Master of the British Barque Aldebaran, now at New Orleans:

You are hereby summoned to comply with the prayer of the annexed petition, or file your answer thereto in writing, in the office of the Clerk of the District Court of the United

States, for the Eastern District of Louisiana, in the city of New Orleans, within ten days from service hereof, or judgment will be given against you by default.

{ L. S. } Witness, the Honorable THEODORE H. MCCALEB, Judge of said Court, at the city of New Orleans, this 22d day of April, 1845, and 69th year of the Independence of the United States.

(Signed,) N. R. JENNINGS, Clerk.

COPY OF SEIZURE.

The President of the United States of America, to the Marshal of the District of Louisiana, or to his lawful Deputy—GREETING:

You are hereby commanded forthwith to seize, and into your possession take, the British Barque Aldebaran, her tackle, apparel and furniture, now libelled by THOMAS HUNTER HOLDERNESS, in the District Court of the United States for the District of Louisiana, that you do cite and admonish the owner or owners, and all and every other person or persons, having or pretending to have, any right, title, in or to the same, to be and appear before a District Court of the United States, for the District aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have, or can, why the said British Barque Aldebaran, her tackle, apparel and furniture should not be delivered to libellant, agreeably to the prayer of the libellant; and how you shall have executed this warrant, that you make return according to law.

{ L. S. } Witness, the Honorable THEODORE H. MCCALEB, Judge of the said Court, this twenty-second day of April, 1845, and the 69th year of the Independence of the United States.

(Signed,) N. R. JENNINGS, Clerk.

COPY OF RULE.

Thomas Hunter Holderness,
vs.
British Barque Aldebaran and Wm. Broader York. } U. S. District Court.

On motion of John Winthrop, Esq., Proctor for libellant, it is ordered that William Broader York show cause, on Thursday, the 24th April, 1845, at 10 o'clock A. M., if any he have, or can, why the barque Aldebaran, libelled herein, her tackle, apparel and furniture, should not be given up to said libellant, or his agent, Richard H. Chilton, upon giving bond, with good and sufficient security, in such sum as the Court may direct.

The rule founded on the petition and oath of Richard Harrison Chilton, came on this day for trial. John Winthrop, Esq. appeared as Proctor for the libellant, and Messrs. Barker and Lacy, Proctors for the respondent, William B. York, Master of the said barque Aldebaran.

Both Mr. Chilton and Captain York appeared in court.

Mr. Barker opened the case, by offering to file an answer to the rule; its ponderous appearance induced Mr. Winthrop to object.

Mr. Winthrop here interrupted the Proctor for the respondent by calling the attention of the Court to the answer proposed to be filed by the gentleman, stating that he had looked over the sheets which composed it, and could find little that was relevant to the present issue, he therefore objected to its being received as an answer to the rule, saying that it appeared more like an answer to the libel than to the rule; that he (Mr. W.) had ten days to except to the answer to the libel; that he intended to except, and to have all such parts as were not in response to the libel stricken out—that he did not come there to speak to Bunkum—he had no private reporter in Court—nor had he a correspondent in New York to herald his fame—or report his proceedings to Lord Aberdeen, nor did he intend to go now into the merits of the case, and thought that His Honor, as well as himself, might not survive this suit, that there appeared to be no prospect of a termination of it, if such strange practice in admiralty was tolerated—that this was a simple rule to show cause why the owner should not take possession of his property, by giving bonds to abide the issue of the suit. The mass of matter produced by the gentleman as an answer to it, said Mr. W., has as much to do with this case, as the clock in this Court, which marks the time used in discussing it. Mr. W. contended that no claim had been filed for the property, and that it was a settled rule in Admiralty proceedings, that no counsel could be heard in opposition to the petition until a claim had been filed.

Mr. Barker did not question the Proctor's familiarity with Admiralty practice—did not profess to know any thing about it himself, except that he knew that common sense and common justice must be the governing rule. His client certainly intended to transmit to Lord Aberdeen, or some other branch of his government, an account from the records of the Courts, of the wrong done him.

Mr. Barker then begged the gentleman on the other side to be patient until the answer should be read, when he would find that it contained a claim for the property. Mr. B. said he did not come here to argue the cause, but to see that the testimony and facts of the case were placed fully before the Court, after which the learned Proctor associated with him, (Judge Lacy,) would make whatever argument should be deemed necessary; that his client had been served with notice of the libel, of the rule, and the copy of the petition of *Richard Harrison Chilton*, all at the same time, and did not well perceive how they could be separated; but, be that as it may, he should file the papers as the answer of Captain York to the rule, and when read, the court would not consider such parts, if any there should be, which did not apply to the case.

The Court here expressed its impatience to hear the document read, saying that it could not perceive the force of the objection until it knew the contents of the paper, when nothing would be considered which was not in response to, or called for by the petition.

Mr. Barker then filed the answer and went on to read it. When Mr. B. had got to that part, and was about to read the card of Mr. Chilton, pub

lished in the Bulletin newspaper, the Proctor for libellant objected—and the Court inquired what that had to do with the case. Mr. Barker replied, that they put themselves on their right to refuse to recognize an agent, until such agent exhibited his authority; this advertisement admitted that a sight of the authority had been demanded on the part of Captain York, and refused by Mr. Chilton, and therefore applicable to the case. On which the Court allowed the reading to go on. That part which spoke of Mr. Chilton's readiness to produce his authority when properly called upon by a competent tribunal being read, the Proctor for Captain York remarked, that its further reading was unnecessary, as it was not material to the issue, the Proctor for libellant said "go on, let us have the whole of it,"—the reading was continued, with a declaration by Mr. B. that the other part of the statement was erroneous.

The answer is in the words and figures following:

ANSWER.

Thomas Hunter Holderness, *vs.* British Barque Aldebaran. } U. S. District Court.

To the Hon. Theodore H. McCaleb, *Judge of the District Court of the United States for the District of Louisiana:*

The answer, or response, of William Broader York, respectfully represents to this honorable Court, and admits that he is Master of the British barque "Aldebaran," of Liverpool; that he is of Hull, in England; that he, together with the said barque, her tackle, apparel and furniture, are within the jurisdiction of this honorable Court; that he is in possession of the same, subject to the authority of this Court; that before his appointment the said vessel may have been in the possession and ownership of the libellant, but does not know particularly.

If Thomas Hunter Holderness, of Liverpool, is, as this respondent believes, the sole and only owner; he knows not on what terms Thomas Holderness, of Hull, received her from such owner.

He found her in possession of Thomas Holderness, of Hull; received her from him, then or soon after, subject to a charter to be carried into effect through the agency of Messrs. Gordon, Wylie & Co., of this city, to all whom this respondent *probably has to account for his possession and stewardship*, and he denies that any or either of them are otherwise in possession, and refuses to surrender his possession and command, until the vessel returns to Hull.

When a claim on him was first made, *he was willing to do so, to any person duly authorised to represent the owner*, waiving his legal rights; and for which purpose he demanded to see the credentials of the person pretending to be authorised; this being denied him, and a most relentless war commenced, and which continues to be carried on, by Richard Harrison Chilton, the pretended agent, this respondent now puts himself on his

legal rights, and insists that so long as he continues to prosecute the voyage agreeably with his instructions, there is no power competent to remove him from his command until the voyage has terminated.

That as to R. H. Chilton's authority to represent the owner of the British barque Aldebaran, he knows nothing beyond this, that the following sentence is to be found in his sailing orders:

"*We understand that 'old flatboats' are to be purchased in New Orleans at a very low rate, and you must* CONSULT WITH Mr. CHILTON *as to the best method of procuring one at as little cost as possible, and with as little labor in breaking up, for the purpose of dunnaging the ship's sides, &c., &c.*"

This respondent further answering says, when Mr. Chilton claimed to have the authority further to act, this respondent, by his counsel, respectfully asked through H. B. M. Consul, (as will more fully appear by the correspondence hereunto annexed) a sight of his authority, in place of producing which, this respondent was thrown into prison, at the instance of the said Chilton, who endeavored to excite rebellion among the crew; and in the discussion of the cause of his confinement before a court of HIS (Chilton's) OWN SELECTION, the said Chilton was required to produce his authority; to enable him to do so the Court was TWICE adjourned, and in place of his exhibiting, either to the Court or this respondent, his authority, a card appears in the Commercial Bulletin newspaper, of Saturday, the 19th instant, in the words and figures following:

BARK ALDEBARAN.

TO THE EDITOR OF THE BULLETIN.

My attention has been directed to several paragraphs in the morning papers in relation to this vessel, and an investigation now going on before Recorder Lewis, consequent upon an affidavit made before him.

I have only to state that these articles contain a one-sided statement of the affair dressed up for the public eye, as I am led to suppose, by the counsel who appeared for Captain York.

It is wholly untrue that the Consul cited any authorities to show the capacity in which he acted, or the power with which he was clothed. Indeed, his counsel, Mr. Winthrop, expressly advised him not to do so. Mr. Mure simply stated that he acted according to the instructions of his Government, and in compliance with the acts of Parliament; and that his only object in saying a word, was for the information of a crowd of British captains, attracted there no doubt by the counsel for the Captain, and the flourish of trumpets with which the intended investigation was announced.

I state this much in justice to the British Consul, and have only to add for myself, that I am ready to show my authority as Agent, when properly called upon, before a competent tribunal.

R. H. CHILTON.

Richard H. Chilton being in court when the Consul's letter was given in evidence, giving authorities, it is strange that he should within two days thereafter have hazarded such a declaration, viz:

"*It is wholly untrue that the Consul cited authorities to show the capacity in which he acted, or the power with which he was clothed.*"

Here is seen the same pertinacious refusal to produce the authority, intimating that the court to which he himself appealed had no right to require

its production, and that this respondent had no right to see it before he delivered over the ship and cargo, of the probable value of seventy-five thousand dollars, belonging to third parties, of which he was in lawful possession.

As to who is the registered owner, this respondent begs leave to refer to the register itself, now in the possession of the British Consul—he, however, admits that the register is not any legal evidence between individuals claiming in favor of the possessor; the whole object of the register being to establish the national character of the vessel, and to prevent frauds on the navigation acts of England, with which the United States Courts have nothing to do.

Until this respondent heard Mr. Chilton swear before the Recorder of the Third Municipality as a witness in the aforesaid investigation, that he (Chilton) "believed that there were other owners than the one mentioned in the register," he had no information on the subject, except what is herein stated. This respondent thinks that the said Richard H. Chilton must be mistaken in this, as he cannot believe that the registered owner would swear falsely, or expose the ship to confiscation, which he is informed and believes would be the case if all the names of the owners were not inserted in the Register.

This evidence just alluded to, was taken down in part by the clerk of the Court, and stricken out by order of the Recorder, on motion of this respondent's counsel, because a witnesses belief was not legal evidence.

This respondent received the barque Alderbaran and appurtenences from Mr. Thomas Holderness, of Hull; was by him appointed to her command; the said Holderness signed the contract with this respondent, individually, and delivered to him his orders for the voyage, signed by Holderness & Chilton; of which firm this respondent supposed the said Holderness the principal, and of which orders a copy is hereunto appended. (For the letter of instructions to Captain York, see page 9).

This respondent has always understood that Thomas Hunter Holderness of Liverpool, was the son of Thomas Holderness of Hull, but what connection they have in business, or what interest, if any, the son has in this vessel, this respondent has no knowledge or information beyond what appears on the Register, and what he heard the said Chilton testify to; he therefore requires the libellant to make out his declarations by legal proof.

This respondent further answering, denies that the said barque is now wrongfully with-held from the agent of the libellant, but insists that she is in possession of respondent, the duly authorised agent of the owner.

This respondent denies that the said Richard H. Chilton is the agent for the said owner; and he denies that he has been superseded "for gross, violent, improper and illegal conduct," or for any other cause, or that he could be superseded by the action of the said Chilton, or the said William Mure, Esq., Her Britannic Majesty's Consul at the port of New Orleans. So far from this, the said Consul on the very day before the filing of the said libel, recognised this respondent as master of the said Aldebaran, and authorised him to discharge the chief mate, recommending this respondent

to submit the whole matter to his owner on his return home, as will more fully appear by his two letters, which, together with the letter of this respondent, refered to therein, were in words and figures following:

New Orleans, 18th April, 1845.

William Mure, Esq.,
H. B. Majesty's Consul:

Dear Sir—You having satisfied me that I was in error in supposing I could discharge the mate of the barque Aldebaran, under my command, without the consent of H. B. Majesty's Consul, I have again to request your consent to my discharging Mr. Scott, chief mate of said vessel, for reasons heretofore assigned to you, and because I do not think that harmony could prevail on the homeward voyage, if he should be continued.

The error of opinion under which I was laboring on the subject, led me, when you refused your consent, to the use of intemperate expressions to you, near the post office, which expressions I withdraw, and regret having made use of them.

Your obedient servant,

(Signed.) WM. B. YORK,
Master of barque Aldebaran.

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British Consulate, New Orleans, April 21st, 1845.

Captain W. B. York:

Sir—I have received your letter of the 18th inst., in which you have expressed regret for certain intemperate expressions made use of towards me, in reference to my refusal to consent to the discharge of the mate of the Aldebaran; I have merely to say that I accept the apology tendered, which, however, was unnecessary, as I do not permit my private feelings to influence my public duties.

In regard to my consent to your now discharging the mate, I can only agree to your doing so, upon the understanding that this is not to compromise or prejudice any proceedings which may be taken by him or others in the Courts of Law in England.

I am, sir,
Yours, &c.,

(Signed.) WM. MURE,
H. B. M. Consul.

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British Consulate, New Orleans, April 21st, 1845,

Sir—In handing you the enclosed letter I have merely to state that I act in this matter passively, having no desire that the interests of the owners of the barque, or the charterers should suffer by delay in offering opposition to a jurisdiction over my Consular duties by tribunals whose power in the matter, I cannot acknowledge.

The best course for you to pursue is, to lay the whole matter before the owners on your arrival in England.

I am, sir,
Your, &c.,

(Signed.) WM. MURE.
H. B. M. Consul.

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Whether "*the action and jurisdiction of this Court are invoked herein at the instance and request of the said William Mure, representing the British Government at the said Port of New Orleans,*" or not, this respondent does not know. The understanding between this respondent and the said Consul, when the aforesaid letters were agreed upon and delivered, was that he, the said Consul, should not oppose any farther objection to this respon-

dent's remaining in the command and returning to Hull in the barque Aldebaran, and that all further legal proceedings should be confined, so far as he or the British Government were concerned, to the Courts of England; leaving to Richard Harrison Chilton to pursue whatever course he thought proper. On the evening of the 21st April, the British Consul sent word to this respondent's counsel, that Richard H. Chilton intended to proceed further in the matter, which he, the said British Consul said he should endeavor to dissuade him from; and that, so far as he was concerned, he would not have any thing more to do in the matter; this he repeated to the counsel of your respondent on the 22d instant, about half past ten o'clock, P. M., superadding that he had washed his hands clear of the matter with apparent satisfaction, as this respondent has been informed, and believes.

This respondent further admits, that Messrs. Gordon, Wylie & Co., merchants of this city, are now loading the said barque; whether or not they have said to the said Chilton, "*that they will protest against her (the barque) as unseaworthy in case the said York should proceed in her to sea, as Captain or Commander,*" this respondent has no knowledge. Mr. Gordon, the principal of said firm, having always declared himself satisfied with this respondent, and on the 18th instant, gave a letter to be used in Court, resisting the complaint of the said Chilton, in words and figures following:

Mr. Barker:

Dear Sir—At your request I have to state that Captain York called at the office of Gordon, Wylie & Co. and reported the arrival here of the ship Aldebaran on the 9th or 10th March, and we have no complaint to make of his conduct since.

Your obedient servant,

(Signed,) A. GORDON.

Subsequently understanding that Richard H. Chilton had been endeavoring to exert an influence over the said Mr. Gordon, and that in consequence Mr. Mure, the Consul, wished to see Mr. Gordon before he gave the promised letter to Captain York, this respondent proposed to accompany the Consul to Mr. Gordon, in order to ascertain what new difficulty had sprung up, when said British Consul refused to accompany this respondent to the office of Mr. Gordon; whereupon this respondent waited on Mr. Gordon, from whom he received a letter, in words and figures following, as near as he can relate them, having been unable to procure the original or a copy thereof:

New Orleans, 21st April, 1845.

Wm. Mure, Esq.

Dear Sir—Captain York, of the British Barque Aldebaran, has promised not to ship any mate who shall not be approved by us, which is all we can reasonably ask.

Dear sir,

Yours truly,

(Signed,) GORDON, WYLIE & Co.

[Note—This letter may be signed A. Gordon, instead of Gordon, Wylie & Co.]

Hence, this respondent cannot believe that the said Chilton has comprehended the true meaning of the notification he alleges to have received from the said Gordon, Wylie & Co., and prays that the said Chilton be required to

produce such notification on the trial of this cause, or otherwise to establish this, and all other of his allegations, by strict and legal proof. As to the libellants' giving bail, *this respondent being in possession*, bail would be no satisfaction to him—the underwriters and all others concerned may hold him answerable, whether such bail proved good or otherwise—many of whom are not represented here in that matter, and it is respectfully contended that however much power, the Court may have to hold the property until final judgment, that it is not competent to take the property from the person in lawful possession, and surrender it to others on bonds.

Whereupon this respondent prays that the officers of this Court be required to return the said barque, her tackle, apparel and furniture, to this respondent, and for general relief, in and about the premises.

And as in duty bound, this respondent will ever pray.

(Signed,) WILLIAM BROADER YORK.

JACOB BARKER, Proctor.

WILLIAM BROADER YORK, being duly sworn, saith that the facts, so far as they come within his own knowledge, stated above, are true, and so far as he derived them from others he believes them to be true.

(Signed,) WILLIAM BROADER YORK.

Sworn to and subscribed before me, this 24th April, 1845.

N. R. JENNINGS, Clerk.

[NOTE.—The Appendix to this answer contains the letter of instructions from Messrs. Holderness & Chilton to Captain York, as found on page 9; also, the letter of Mr. Barker to the British Consul, marked document D, as found on page 13; the letter of the British Consul marked document F, as found on page 14; and Mr. Barker's letter to the British Consul in reply, marked document E, as found on page 14. Reference to all which is respectfully directed.]

Mr. BARKER now called upon the libellant to sustain the allegations of his petition.

Mr. WINTHROP repeated that he did not come there to try the case, and objected to many parts of the answer of respondent, as being foreign to the point at issue. He insisted that for the purposes of the rule before the Court, the Court was bound to consider all the allegations in the petition as true; and that as a matter of right the prayer of the petition in the libel should be granted.

Mr. BARKER replied, denying the position assumed by Mr. Winthrop, and insisted that if such was the fact the rule was a nullity; it called Captain York into Court to say why the prayer of the petitioner should not be granted; he answers and says, because the allegations on which the prayer is founded are untrue, and requiring the libellant to sustain them by proof; and further, if true, they do not form any reason for taking the property from the person in lawful possession; that no agent could do this without

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ERRATA.—On page 32, 10th line, instead of "about half past ten o'clock, P. M.," read "about half past ONE o'clock, P. M."

On page 27, 23d line, after the word "proceedings," in Mr. Winthrop's remarks, add the words—so as to read, "with which he was well acquainted," that no counsel, &c.

exhibiting his authority. For that reason, if no other existed, these proceedings should be dismissed, as the agent had refused to exhibit his authority attempting to shield himself under the shallow pretence that he had not been required to do so by *competent authority.* Mr. B. insisted that Captain York, being in lawful possession, and so averred in the bill of complaint, was the competent authority, and that he had a right to see the authority under which the agent acted before he could be held to deliver the property of a third party, without the intervention of any Court, or before he could proceed one step in the business.

Mr. B. went on to add, that inasmuch as the Proctor for libellant declined to sustain the allegations of the petition, he, although not called upon to do so, would go on and prove some, if not all of them to be utterly false; and if he should show one to be false, the whole would fall as unworthy of belief. Whereupon, Mr. Barker said, it would be remembered that Mr. Chilton had sworn, *in his petition*, among other things, that Thomas Hunter Holderness was the sole owner of the barque Aldebaran; he would now call the Clerk of the Recorder's Court of the 3d Municipality, to prove that Richard H. Chilton swore before that Court, that he believed there were other owners in that vessel than the one named in the register.

Mr. Barker then called—

John Eugene Layet, who being duly sworn on the part of respondent, deposed that he is Secretary of the Recorder of Municipality No. 3; that in the examination of the case of the State against W. B. York, charged by Richard Harrison Chilton with an intention to commit a breach of the peace, lately investigated before that Recorder's Court, Mr. Chilton being called upon as a witness, testified in that Court, that he had good reason to believe there were other owners in the British Barque Aldebaran than the one on the register of that vessel. That he had commenced taking this testimony down, when Mr. Barker, counsel for Captain York objected, saying that BELIEF was not legal testimony; so the Court ruled, and what he had written down as Chilton's belief was stricken out.

Cross-Examined by Mr. Winthrop for Libellant.

Did not Mr. Chilton say that he did not know that Thomas Chilton was part owner?

Answer—Mr. Chilton said he had good reason to believe that Thomas Chilton was a part owner of the barque Aldebaran.

Mr. Barker then put in the correspondence with Mr. Mure, Mr. Winthrop consenting to the letters being read as genuine, reserving the exception which he had made to their introduction, and their contents. [For these letters see documents marked E, F and D, pages 13 and 14.]

Mr. Barker then called Michael Moore to prove a message which had been sent by Mr. Mure, the British Consul to Mr. Barker.

Here a long and animated discussion took place between the Proctors.

Mr. Winthrop insisted that Mr. Mure was the proper witness, and said, let him be called and state what he had said.

Mr. Barker insisted that Mr. Mure had been made a party to these proceedings. If what was stated in the petition was true, viz:

"That the action and jurisdiction of this Court are invoked herein *at the instance and request* of the said William Mure, representing the British Government at the said port of New Orleans,"—

It would (said Mr. Barker) be the most faithless conduct on the records of any Court; that he could not believe a word of it, *as he had, in behalf of his client, Capt. York, negotiated a compromise with Mr. Mure, the Consul recognizing the continued command of Capt. York;* consenting to his discharging James Scott the Chief Mate, (which had been the orignal bone of contention,) promising not to interfere further with Captain York's authority as commander of the Aldebaran, and referring all legal proceedings, if any should be found necessary, to the Courts of England, so far as he, the Consul, and the British Government were concerned, leaving Mr. Chilton at liberty to pursue his own course. Mr. Barker said he could not believe it possible that Mr. Mure was, at the moment of receiving the apology agreed on, and acknowledging himself satisfied—at work to deprive Captain York of the benefit of the compromise. That so far as he knew, the British Consul's conduct had been perfectly honorable, but, if the allegation in the petition was true, its whole character would be changed, and the testimony of his own letters, together with that of several witnesses which would be introduced, would fill every mind with perfect astonishment—and would be altogether sufficient to induce this Court to dismiss the whole proceedings, as it (the Court) could not allow its power to be invoked to sanction any such conduct; that his client could not, under the circumstances of the case, be expected to make Mr. Mure a witness, and thereby be deprived of the right to contradict the testimony he might give—no witness was bound to criminate himself—that the British Consul and the British Government were a sort of party to these proceedings: the whole thing was so novel that he (Mr. B.) did not know how to treat the subject—that it was not possible for either to extend or diminish the jurisdiction of this Court—that Richard Harrison Chilton or the owner of the Aldebaran were competent to maintain a suit in this, or any other Court in the United States, without the consent of Her Britannic Majesty, or her Consul—that the very naming of them in the petition was a vassalage unbecoming freemen. Besides, (said Mr. B.) there was no authority, English or American, for such a proceeding; the law relied on by the Consul, cited in his own letter, is for the protection of seamen against the tyranny of ship masters; it makes it a criminal offence to leave a mate or sailor in a foreign country without the consent of the Consul. In this case he was applied to and refused his consent, there ended the power of the Consul. Had the Captain put the mate on shore in defiance of the Consul's pleasure, and gone home without him, as soon as he arrived within the British dominions, he would have been liable to arrest, trial and conviction, for the offence; which offence could not exist prior to the departure of the ship without the mate; had this happened, it was the duty of the Consul to have transmitted to his Government the necessary evidence.

The Court then allowed witnesses to be examined.

Michael Moore, for respondent, being duly sworn, deposed that Mr. Mure, the British Consul, and himself were in the Merchants Exchange Reading Rooms, on the evening of the 21st instant; in the course of conversation, Mr. Mure asked him where Mr. Barker was? Witness replied, at his, Mr. Barker's house, that being the most likely place to find him. The conversation then turned upon the subject of the Aldebaran, when Mr. Mure requested him (witness) to state to Mr. Barker that he understood Mr. Chilton was going to proceed further in the matter; but that he (Mure) had nothing more to do in it; that he had washed his hands of it, and that he would endeavor to dissuade Mr. Chilton from it.

John G. Robinson, for respondent, being duly sworn, deposed that Mr. Mure told him that the difficulty with Captain York of the Aldebaran had been arranged, so far as he was concerned; that he had washed his hands of all further proceedings in the matter, on this side of the water.

Cross-Examined.

These proceedings (the libel case,) were not mentioned.

Direct Examination resumed.

Knows it was in relation to the dispute with Captain York; this conversation took place within two or three days past.

Two or three other witnesses, with whom the British Consul had had similar conversations, (as the Proctors for respondent stated they would be able to prove by them,) were in attendance in Court in the morning, but not then answering to the call, Mr. Barker said he would not detain the Court to send for them, as the testimony already given was all-sufficient on that point.

Mr. Barker then asked for an attachment against William Mure, Esq. stating that a *subpœna duces tecum* requiring him to appear and produce the letter of Messrs. Gordon, Wylie & Co. referred to in the answer, had been issued and served upon him, and yet Mr. Mure had not appeared in Court.

Mr. Winthrop stated that Mr. Mure was sick and unable to come; that he had been sent home by Dr. Rushton; that he (Mr. W.) would admit the copy in the answer to be a true copy, or so in substance, reserving his right to except to the use of it.

Mr. Gordon, also a witness who had been subpœned, not being in Court was again sent for.

Mr. Winthrop then offered himself as a witness, and being duly sworn, deposed that Mr. Mure, the Consul, was at his office on Monday evening, (21st;) that Mr. Chilton was also there; that Mr. Mure in express terms, consented and advised the institution of this suit.

Mr. Barker then proposed that he should be examined, and being duly sworn, deposed, that being very anxious to procure a reconciliation of the differences between the parties, he called on the British Consul on the 17th instant, and stated to that gentleman that he supposed matters might be

so arranged as to put an end to further expense and delay. Mr. Mure seemed very willing for such an arrangement to be made, and promised to send Mr. Chilton to him (witness) to arrange the terms. Mr. Chilton called and made a memorandum of what he would agree to, and what witness promised to recommend to Captain York. Witness believes the heads of every thing agreed upon were put down in pencil by Mr. Chilton. The terms agreed on were that all litigation was to terminate; that Mr. Chilton was to pay Captain York twelve dollars and fifty cents, expenses incurred by the seizure of his chronometer by Chilton; that Captain York was to make a satisfactory explanation to the Consul; that the Consul was to give permission for Captain York to discharge his mate, Scott; *and that no further interruption was to be made, or attempted, to Captain York's command* of the barque Aldebaran; that Mr. Chilton or the Consul were to arrange with the mate; and that Capt. York was to endeavor to reconcile matters with his second mate and crew. Witness then accompanied Mr. Chilton to the Consul's office, for his approbation; when Mr. Chilton stated the aforesaid terms to the Consul, holding the memorandum in his hand, and witness believes read from it. The Consul said it was all very well, except that he could not agree to release Captain York from prosecution in England; witness replied that he supposed the most difficult part would be to agree upon such an explanation as would be satisfactory to him, Mr. Mure. Witness then remarked to the Consul, that as to the prosecution in England, Captain York had not done any wrong and ought not to fear prosecution. A letter was then drafted by witness, which met the approbation of the Consul, and he (the Consul) detailed what reply he would make, with which witness repaired to Captain York, who approved of the letter, but refused to release Mr. Chilton from damages without he was also exhonerated from the threatened prosecution in England. Witness immediately sent a messenger to Mr. Chilton, to notify him of Captain York's determination, that he might follow up his complaint before the Recorder if he thought proper; the hour to which the examination had been adjourned having arrived. The messenger delivered the message and accompanied Mr. Chilton to the office of the Consul, and heard him (Chilton) notify him of the nature of the message. The aforesaid investigation of the alleged intention on the part of Captain York to break the peace, went on, and on the evening of that day, the 18th, witness wrote the letter to Mr. Mure in words and figures following:

New Orleans, 18th April, 1845.

William Mure, Esq.,
H. B. Majesty's Consul:

Dear Sir—Agreeably to promise I proceeded from your office immediately to the "Aldebaran," and submitted to Capt. York the terms suggested for a compromise of the difficulties in relation to the command of that vessel; the draft of a letter to be addressed by him to you seemed to meet his approbation, conditioned that your reply, to be delivered simultaneously, should be approved by him, which, from our conversation, I am satisfied would be the case.

He, however, refuses to release his claims on Mr. Chilton for damages while threatened with legal proceedings against him on the other side.

Of all which I sent my clerk to notify Mr. Chilton, that he might, if he thought proper, attend to the prosecution of his complaint, which Captain York could not control, his duty being to defend himself. Mr. Chilton not having thought proper to withdraw the complaint,

the trial went on from necessity; during the progress he appeared, and supposing the compromise would supersede the necessity for him to produce his authority, was not then prepared to do so, and the Court adjourned the proceedings until 1 o'clock to-morrow, to allow him time to furnish the necessary proofs.

Neither the State nor public prosecutor can take cognizance of any arrangement between the parties, hence this suit, result how it may, should not interrupt the negotiation for a compromise, which I yet hope may take place.

Very respectfully,
Your ob't. serv't,
(Signed.) JACOB BARKER.

Witness continued—he called on the Consul the next day, and found him disposed to carry into effect the arrangement, so far as he (the Consul) was concerned, leaving Mr. Chilton to pursue his own course; and accordingly the letter of apology was delivered. Some delay taking place in furnishing an answer, an explanation was demanded, on the morning of the 21st April. The Consul in reply said that Mr. Chilton had been to see Mr. Gordon, (Gordon, Wylie & Co.) and that the said Gordon wished to see him (the British Consul) before he could proceed any further. Captain York being present, proposed to accompany the Consul to Mr. Gordon's office, in order to ascertain what new difficulty had sprung up, when the said Consul refused to permit him to do so; whereupon Capt. York waited on Mr. Gordon himself, from whom he received a letter, saying that Captain York had agreed not to ship any mate for the Aldebaran who did not meet with the approbation of Messrs. Gordon, Wylie & Co., and which was all that could be reasonably required of him.

This letter was immediately delivered to the Consul, who drafted a letter to be sent to Captain York, in answer to the renewed application to discharge the mate, coupled with the apology, the Consul at the same time agreeing that the permission to discharge the mate should be endorsed on the shipping articles in his possession, pursuant to the requirements of the acts of Parliament, reserving Mr. Scott's rights as conditioned in the letter. Captain York being in haste to attend to his duties on board the ship, as commander, and the Consul wishing to make a fair copy of the letter agreed upon, retained it for that purpose, and promised to send it to witness, or to Captain York, in the course of the day; in the afternoon or evening the two letters which have been read in evidence were sent to the office of witness, addressed by the Consul to Capt. York.

It being late, and Mr. Gordon not having been found, Mr. Winthrop proposed to the Court to submit the case on the evidence, *without argument.* Mr. Barker said he was willing that the argument should go on, on the supposition that Mr. Gordon would contradict the allegation in the petition,

That Messrs. Gordon, Wylie & Co. "will protest against her, (the said barque,) as unseaworthy in case the said York should proceed in her to sea. as Captain or commander:"

This allegation, said Mr. Barker, IS TRUE OR FALSE; let Mr. Gordon come in the morning and say which. He, Mr. B., had but that single question to ask that witness.

This having been agreed to, the Proctors then addressed the Court in support of their several claims.

Mr. WINTHROP, for libellant, commenced by enforcing on the attention

of the Court what he had urged in opening the case, insisting on its being the duty of the Court for the purposes of the rule under discussion, to consider all the allegations contained in the petition as true; that it was the right of his client to have the property on giving good and sufficient bonds, which he was prepared to do, having been *the first applicant*; that he, Mr. W., was well acquainted with Admiralty practice; that the demurrage of the vessel, seamen's wages, and other expenses, were too serious for the Court to permit this case to go on, and hold the property under seizure until the final action of the trial of this cause—which might not be arrived at under at least two months—intimating that the cargo, which consisted of cotton, was a very speculative article, and great losses might ensue by a change in the *market price*, and the vessel become liable therefor; that no application had been made on the part of Capt. York to bond the barque; that his client ought to have been met with a counter claim to bond the vessel, and that not having been done, he, Mr. W., insisted that the Court could not refuse their application.

Mr. Barker said that although he had not intended to offer any argument, and should not at that late hour of the evening, or think of detaining the court another day as the barque was ready for sea, and his client, Captain York, was more anxious than any other person could be, to avoid expense and delay: yet his duty compelled him to offer a few remarks. As to the demurrage, sailors wages, other expenses, and damages by the fall in the price of cotton, these were matters purely applicable to the complainant. His client had not arrested the barque; he had not taken any proceedings to bring on such disasters; he had not yet struck the first blow; all that Captain York had done was to defend himself. His client's turn would come sooner or later. They, (continued Mr. B.) the gentlemen, parties to this libel suit, intending to break the peace themselves, put my client in prison, lest they should provoke him to do so. They libel the vessel and occasion all the evils of which they now complain, and ask the Court to protect them from such evils by invading his rights. They say because the application was first made by them, *that they are entitled to bond the vessel.* First indeed! yes, before we did *or could* know of these proceedings. However, that point does not come up, as we are not applicants to bond the vessel. We deny that we can be required to bond, any more than we can be to surrender the property before the voyage has terminated, without an allegation of danger or delinquency, and then we should have a right to traverse, investigate, discuss, and have such allegation adjudged before we could be deprived of our property—our character—or our honor—which are comprised in the command.

The testimony of the Proctor who has just spoken, gave me (said Mr. B.) great pain; although it did not sustain the oath of his client. It, unexplained, went far enough to establish the bad faith of the British Consul, and that he had acted a double part; it is a misfortune to that gentleman that he should be taken sick at the very moment his own honor required him to be in Court. I could not (added Mr. B.) have believed Mr. Mure capable of intrigueing with the enemy to pursue hostile acts, while he was pledging himself not to have any thing further to do in the matter

on this side of the Atlantic, at the same time professing not to allow his private feelings to influence his official conduct; he could not believe he would violate the condition of his letters of the 21st, as found in the respondent's answer, before the ink with which they were written had time to dry; that he would fly to the office of a lawyer the moment he had received the apology, and *request proccedings to be instituted* which he had stipulated not to have any thing to do with, as a condition on which the apology should be made, and this too before a messenger reached Captain York with these letters. All this it will be remembered is alleged to have been done on the same day on which the Consul's letters were written, the 21st April. Mr. Moore, the Proctor for the libellant, (Mr. Winthrop,) and himself, in their testimony, all agreed as to that date, nor was it to be believed that after having been to this meeting at the lawyer's office, and consented to and advised, I will not say requested these proceedings, (as I do not yet believe he did so,) that he should proceed directly from such faithless conduct to the Merchants Exchange in search of Mr. Barker, to apprize him that Captain York was in danger of further proceedings from Mr. Chilton—to assure him (Mr. B.) that he had, and should preserve his plighted faith, and not have any thing further to do in the matter on this side of the Atlantic—that he (the Consul) was very sorry, and would endeavor to dissuade Mr. Chilton therefrom, and not finding Mr. Barker he sent him, (Mr. B.) by his friend Mr. Moore, a message to the aforesaid effect. All this is in proof! and said Mr. B. will this Court entertain any further proceedings in such a case?

Mr. Lacy, also for the respondent, then rose and said that the Court and all parties seemed anxious to terminate this cause this evening, all being much fatigued, and as the other gentlemen have declined to go into the argument at length, he should follow their example. Excepting altogether to the position of the Proctor for the libellant, "that the Court was bound to take for true," in deciding this rule, "that all the allegations in the petition were true," and on that assumption could deprive an individual of his all, and involve him in ruinous responsibility. The doctrine, said Mr. L. is too absurd, too dangerous, to be entertained by this or any other Court. How does the case stand? Sundry allegations are made under oath, on which the ship is arrested; we under *oath* deny their truth; *the complainant refuses to sustain them* BY PROOF, when we go on AND PROVE THEM FALSE, *and in the face of such testimony* we are told that the Court are to take them all for true—what can be more preposterous? Suppose they were all true—the complainant *admits us to be in possession.* No complaint made that we are not lawfully so—no proof adduced to show the authority of the agent, *not even a letter*, and, strictly speaking, before he could be recognized to carry on this, or any other suit, he must produce a regular power of attorney, under seal, duly authenticated. With this explanation, and with a request that if the Court should find any difficulty in coming to a satisfactory conclusion, that it would allow the Proctors on both sides to go fully into the argument—they then submitted the case to the Court.

Mr. Winthrop then rose and said that he had no further remarks to make, as he understood the Court to recognize the position he assumed—

that the allegations in the petition were *prima facie* evidence of their truth.

The Court then adjourned at a late hour.

On the following morning the Court took up this case, to receive further testimony.

Alexander Gordon, for respondent, being duly sworn, deposed that he did not say that his firm would protest against the barque Aldebaran as unseaworthy, in case the said York should proceed in her to sea as Captain or commander.

Cross-Examined by Mr. Winthrop and also by Mr. Chilton.

Witness said he had had some conversation with Mr. Chilton, about protesting if the ship went to sea without being properly manned, but this had no reference to Captain York.

Would, said Mr. Chilton, a ship be seaworthy with an intemperate commander?

Witness answered, certainly that would be a radical defect—that he knew nothing of Captain York being intemperate, that he had never seen him so.

Mr. Barker wished to resume the direct examination of Mr. Gordon.

Mr. Winthrop objected, saying that the understanding was that there should be but one question propounded to the witness by the Proctor for the respondent—whether or not the allegation in the petition of libellant in relation to said witness was true or false; he contended that it had been put and answered.

Mr. Barker said he was satisfied.

DECISION OF THE COURT.

(*Extract from the Minutes.*)

The Court having considered the rule filed in this cause by the libellant, delivered this day its judgment, in words and figures following, to wit:

"It is ordered that the said rule be dismissed." Whereupon, on motion of John Winthrop, Esq. of counsel for the plaintiff in rule, it is ordered a re-hearing be granted.

REASONS FOR JUDGMENT.

His Honor JUDGE McCALEB, *afterwards gave the following reasons in support of the foregoing judgment.*

Holderness
vs.
The British Barque Aldebaran. } In Admiralty.

The libel in this case sets forth that Thomas Hunter Holderness, of Liverpool, is the sole and registered owner of the barque Aldebaran, now in the port of New Orleans, that the possession of said barque is now wrongfully withheld from the agent of the libellant, here present and representing the owners, to wit, Richard H. Chilton, by William B. York, who alleges himself to be entitled to the possession thereof, as Captain, although he has long since been deprived of his command and superseded for gross, violent, improper and illegal conduct, by the action of said agent and William Mure, Esquire, British Consul at the Port of New Orleans, acting in his official capacity; that Richard H. Chilton is the true and lawful agent of the owner, and as such duly authorized and empowered to act in the premises; that Gordon, Wylie & Co., merchants of this city, are now loading the said barque, and have notified the agent of libellant, that they will protest against her as unseaworthy, in case said York should proceed in her to sea, as Captain or commander; that the action and jurisdiction of this Court are invoked herein, at the instance and request of the British Consul at this port.

The libel then prays for process according to the course of Courts of Admiralty and Marine Jurisdiction, against the barque, and that the Captain and all others having any right, title or interest in the same, may be cited to shew cause why possession of the vessel should not be delivered to the libellant. The libel is sworn to by Richard H. Chilton, representing himself as agent of the libellant. Process was issued against the vessel and she was taken into custody by the Marshal of this Court.

A rule was then taken on the Captain to show cause why the vessel should not be delivered up to Chilton, upon his giving bond, with good and sufficient security in such sum as the Court might direct.

The Captain accordingly appeared and in answer to the rule, admitted that he was in possession of the vessel as Master, and represented under oath that he was of Hull in England; that before his appointment the vessel may have been in the possession and ownership of the libellant, but he does not know positively; that if Thomas Hunter Holderness, of Liverpool, is, as he believes, the sole owner, he does not know on what terms Thomas Holderness, of Hull, received her from him then or soon after, subject to a charter to be carried into effect through the agency of Gordon, Wylie & Co. of this city; to all of whom he probably has to account for his own possession and stewardship, and he denies that any or either of them are otherwise in possession, and refuses to surrender until the vessel returns to

Hull. He alleges that when a claim was first made on him for possession, he was willing to comply, and to deliver the barque to any person duly authorized to represent his owner, (waiving his own legal rights,) and for this purpose he demanded the authority of the individual pretending to be authorized; that this was refused and a most relentless war was commenced and carried on against him by R. H. Chilton, the pretended agent. He claims his legal rights, and insists that so long as he continues to prosecute the voyage agreeably to his instructions, there is no power competent to remove him from his command until the voyage has terminated; that he knows nothing of the authority of Chilton beyond the allusion made to him in his (respondent's) sailing orders, wherein he is required to consult said Chilton as to the best method of procuring a flat boat in this port for dunnaging the vessel. He declares that when Chilton claimed to exercise authority, he, by his counsel, asked through the British Consul, permission to see it; that instead of having his request complied with, he was thrown into prison at the instance of Chilton, who endeavored to excite rebellion among the crew of the vessel; and in the discussion of the cause of his confinement before a tribunal of his (Chilton's) own selection, the said Chilton was required to produce his authority, which was refused. He alleges that Mr. Gordon, of the firm of Gordon, Wylie & Co. has expressed himself satisfied with his conduct, and he insists upon his right to hold possession of the barque.

I have stated all the facts set up in this answer to the rule, which are material to the decision upon the application of the libellants.

The libel presents a fair case for the interposition of the Court, and if its allegations were uncontradicted, my course would be a plain one. The answer, however, makes out a strong case, both in law and equity, in favor of the Master, and in the absence of the proof which becomes absolutely necessary to sustain the libel, I am compelled to refuse the relief sought by the individual claiming to be the agent of the owners. The oath of the Master must have the same legal force as the oath of the agent, and in this case, in one material point, it is sustained by the oath of Mr. Gordon, of the firm of Gordon, Wylie & Co., who declares that *he did not notify Chilton that his house would protest if Captain York should go to sea as Master* of the barque Aldebaran.

No evidence has been adduced to establish the ownership of the vessel, or the agency of Chilton. There is indeed reason to believe that Thomas Hunter Holderness, of Liverpool, is the owner of the barque, but it is clear from the answer, and from the sailing orders of the Master, given in evidence, that the vessel is in possession of the respondent, by virtue of a charter to Thomas Holderness, of Hull. The sailing orders are signed by Holderness & Chilton, and dated at Hull. It is not pretended that *the* Chilton here named is the individual claiming to be the agent of the owners in this libel. How far the register could be regarded as legal evidence of ownership is a question which I need not decide, since that the register was not offered in evidence on the trial of the rule. The respondent has shewn that he was willing to surrender the vessel to any person having the legal authority to receive her. *That authority has never been produced,*

and although the libel sworn to presented a case strong enough to call for the interposition of the Court upon those rules and principles of national comity upon which Courts of Admiralty act in matters of this nature, yet when the very facts set forth are put at issue by the answer, *also sworn to*, it would be out of the power of the Court to grant the relief sought for without evidence to justify it. The direct responsibility of the Master to the charterers is a sufficient reason for refusing to surrender the vessel except to a person armed with full authority to receive her.

As a principle of Admiralty law, it is clear that an owner may dispossess a master; and where there are several owners, a majority is sufficient to authorize the removal. In the case of the "New Draper," (4. Robinson's Admiralty Reports, 237,) Sir William Scott holds the following language:

"This is a proceeding for the purpose of dispossessing a master *and part owner of a ship* which had been under his command. The dispossession of a master is in its nature not an uncommon proceeding; all that the Court requires in cases where the master is not an owner, is that the majority of the proprietors should declare their dis-inclination to continue him in possession.

"In the case of a master and *part owner* something more is required, before the Court will proceed to dispossess a person who is also a proprietor in the vessel, and whose possession, therefore, the common law is, upon general principles, inclined to maintain. It is not, however, by any means unprecedented for this Court to proceed even to that extent; but, then, some special reason is commonly stated, to induce the Court to interpose."

In this case we find that for cause shown a Master, who was also *a part owner, was removed from the command of a ship*; and it is clear, that in the case of a master, not a part owner, it is only necessary that the owner, or a majority of owners, if there are more than one, should declare their disinclination to keep him in possession, to justify the Court in decreeing a removal. If the application in this case were sustained by proper evidence, I should feel bound to grant it.

The question of *jurisdiction*, although not directly raised in argument, or by the pleadings, has not escaped the attention of the Court. It is a question always of primary importance, and one which I feel at all times bound to examine.

In contests between foreigners, the Courts of Admiralty, both in this country and in England, usually decline exercising jurisdiction, and refer the parties to their own tribunals. There are cases, however, where, from necessity and upon principles of national comity, a contrary course is pursued. "It is with the greatest reluctance," says Sir William Scott, "that this Court takes up questions of this kind, where foreigners are alone concerned. These are questions which do not properly belong to this *jus gentium*, but depends upon the municipal regulations of different countries, with which this Court can be but imperfectly acquainted. The Court, is, therefore, very unwilling to enter upon such questions, and has never, I believe, entertained suits of this kind, (a cause of possession),

unless the cases have been referred to its decision by the consent of parties, or by the intervention of the representative of the foreign State, devolving the jurisdiction of his own country on this Court." (See the case of the Deuter 1st Haggard.)

I have, *by consent of the parties*, taken jurisdiction of the cause before me, and not by the intervention of the British Consul at this port. *He is not the representative of Great Britain*, in the sense in which that term is used in the authority just cited, but stands before the Court simply in the light of a Commercial Agent, and certainly without the necessary power to devolve the jurisdiction of his own country upon this tribunal.

For the reasons here given, and in the absence of the necessary evidence to establish the alleged ownership and agency, I must discharge the Rule, and the same is discharged accordingly.

When the Court had delivered its judgment, with the reasons for arriving at such decision, Mr. Winthrop, Proctor for libellant, expressed great surprise, saying he had understood the Court to assent to the proposition, *that all the allegations in the petition were* for the purpose of deciding this Rule, *to be taken for true*, therefore he had not adduced proof which he held; nor proceeded to sum up the case.

The Court in reply said, certainly not to be taken for true, when denied by the defendant under oath, and contradicted by testimony.

The learned Proctor then asked for a re-hearing, that he might offer proof.

The Court said in reply, that the case had been decided, but that under the allegation *of surprise*, it could not refuse a re-hearing on the presentation of the necessary affidavit; but that the re-hearing must be had after notice to the opposite party, and take its place on the calender of next week; that all other business could not be crowded out to give place to this, when they already had had abundance of time to produce proof, if they had been inclined to do so. The affidavit was drawn up, read to the Court, and a re-hearing ordered accordingly.

The attention of the reader is now called to the proceedings which followed immediately after this decision was given, remarking by the way, that, although the affidavit just alluded to was prepared and read in Court, still it was not filed or heard of afterwards.

The documents will speak for themselves; the repulsed enemy was still resolved on his purpose and its accomplishment, no matter by what means the object was attained. If it was the desire or intention of the compiler to take particular sides in this controversy, strict justice, and a true narrative of facts, would induce him to show several clandestine plans which have come to his knowledge, in order to get the barque from her moorings between the above decision, on Saturday morning, and the following Monday; those, however, proving abortive, he sees no necessity for, and goes again to the record.

Before the next proceedings in Court are arrived at, it is deemed well to notice a fact which has been furnished to him, in reference to the faith of the Consul. It will be remembered that the British Consul *had granted permission to Captain York*, in his letter of the 21st April, (as found on page 31,) *to discharge James Scott, the chief mate* of the Aldebaran, and endorse the same, as a matter of course, on the shipping articles of the vessel. This not having been done, Captain York proceeded with a Notary to the office of the Consul, and made the necessary demand; the Consul being absent, notice of the demand was left by the Notary, and this answer elicited.

BRITISH CONSULATE, New Orleans, April 26th, 1845.

WILLIAM CHRISTY, ESQ.,
Notary Public:

Dear Sir—I have received your note, demanding that I shall endorse on the shipping articles of the barque Aldebaran the discharge of James Scott as mate of said vessel, and regret that I cannot comply with same: first, because James Scott is not discharged; and second, because I am informed that the barque has cleared this day at the Custom House in command of another captain.

I am, sir,
Yours, respectfully,
(Signed.) WM. MURE,
H. B. M. Consul.

Whereupon the Notary protested, &c.

The name of the negligent abusive and discarded mate, Scott, which had been inserted on the register by the British Consul, as master, in place of Captain York, was erased with a sharp instrument; he re-enstated as mate, another person appointed as master, his name endorsed by the Consul on the register, and the ship cleared at the Consul's office under the command of this new captain, in violation of the treaty made with Captain York on the 21st of April, yet the Consul, on the 26th, writes that he regrets that he cannot comply with Captain York's demand to have permission to discharge the mate, endorsed on the shipping articles, pursuant to the terms of that treaty, and pursuant with the requirements of the British law.

Perceiving that in the absence of the Marshal from the city, the keeper, acting under the direction of the Proctor for the libellant, rather than the authority of the Court, *had withdrawn from the vessel*, and that the said Chilton was preparing to send her beyond the jurisdiction of the Court in defiance of all law and authority and before the re-hearing which had been ordered had taken place, application was made by Captain York to His Honor Judge M'Caleb, to interpose his authority to call back the Marshal's officers to their duty—hence the following affidavit:

FURTHER PROCEEDINGS IN THE U. S. COURT.

DISTRICT COURT OF THE UNITED STATES

FOR THE

DISTRICT OF LOUISIANA.

AFFIDAVIT OF CAPTAIN YORK.

Thomas Hunter Holderness
vs.
British barque Aldebaran
} United States District Court.

Monday, 28th April, 1845.

PRESENT:—HIS HONOR, THEODORE H. M'CALEB, JUDGE.

This day personally appeared before the undersigned, William B. York, who makes oath that the British barque Aldebaran, which was seized by virtue of the process of the Honorable the District Court of the United States for the district of Louisiana, in the suit of Thomas H. Holderness *vs.* said barque Aldebaran and deponent, and held by the Marshal of the United States for said district, has been surrendered and abandoned by said Marshal to the custody of others; and that the said vessel is now on the eve of being taken from beyond the jurisdiction of this honorable Court. The deponent York, therefore prays that an order may issue, directing the said Marshal to take and keep possession of the said vessel until the further orders of this honorable Court.

(Signed.) WM. B. YORK.

Sworn to and subscribed before me, this 28th day of April, 1845.

(Signed.) THEO. H. M'CALEB,
U. S. Judge.

On filing the written affidavit of W. B. York, (as above) the court gave an order thereon, in the words and figures following, to-wit:

Upon the within affidavit — It is ordered that the Marshal do retain possession of the vessel, unless the libel be regularly withdrawn.

(Signed.) THEO. H. M'CALEB,
U. S. Judge.

Thereupon an order was issued by the Clerk of said Court, directing the said Marshal to act in accordance therewith.

Note.—Late in the evening of the same day the libellant, through Messrs. Chrihon and Mure, applied to the Judge and obtained the order which now follows. Particular attention is directed to the wording of the order of the Judge, and that issued to the U. S. Marshal to release the vessel, purporting to be founded upon it; no direction was given as to the possession; and not a word said about delivering the vessel "to the said Thomas H. Holderness, or his agent."

If the libel had been really withdrawn by the libellant, then the possession still remained in Captain York, for he was in possession of the vessel when she was libelled, and they had failed to show why he should not retain it.

SECOND ORDER.

Thomas Hunter Holderness,
vs.
British Barque Aldebaran.

} U. S. District Court.

Monday, April 28th, 1845.

PRESENT—HIS HONOR, T. H. M'CALEB, JUDGE.

The following order was this day granted by the Court, after the above, to-wit: "The Proctor for libellant in this case has asked for an order to discontinue the libel; as there seems to be no reason why this order should not be granted, the clerk will enter an order to that effect, upon the payment of costs."

CLERK'S OFFICE, April 29th, 1845.
I hereby certify that the above are true and correct extracts from the minutes.
(Signed,) N. R. JENNINGS, Clerk.

ORDER TO THE MARSHAL.

UNITED STATES OF AMERICA — EASTERN DISTRICT OF LOUISIANA.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or his lawful Deputy, Greeting:

Whereas in the District Court of the United States, in and for the Eastern District of Louisiana, the Judge has this day issued the following order, to-wit: Holderness *vs.* the barque Aldebaran, the Proctor for libellant in this case has asked for an order to discontinue the libel. As there seems to be no reason why this order should not be granted, the Clerk will enter an order to that effect, upon payment of costs.

Under this order of the Court, the barque Aldebaran, libelled by Thomas Hunter Holderness, has been released from seizure, according to law, and the costs of suit up to this date having been paid, you are hereby commanded, conformably to law, and the order of the said Court, to cause the said barque Aldebaran to be delivered to the said Thomas H. Holderness, or his Agent, and herein make return.

{ L. S. } Witness, the Honorable THEODORE H. MCCALEB, Judge of said Court, at New Orleans, this 28th day of April, A. D. 1845, and 69th year of the Independence of the United States.
(Signed.) N. R. JENNINGS, Clerk.

ENDORSEMENTS.

New Orleans, April 28th, 1845. Received from I. P. Walden, Esq., in conformity with the within order of Court, the barque Aldebaran and cargo.

Costs in full to be paid to the Marshal.
$16 paid men.
(Signed.) R. H. CHILTON,
Agent.

All the costs, as charged by the Marshal, to be paid by J. Winthrop.
(Signed.) R. M. CARTER,
Attorney.

UNITED STATES DISTRICT COURT — FOR THE DISTRICT OF LOUISIANA.

CLERK'S OFFICE, April 29th, 1845.

{ L. S. } I hereby certify that the foregoing is a true copy from the original on file.
(Signed.) N. R. JENNINGS, Clerk.

The Aldebaran and cargo, probably worth one hundred thousand dollars, was thus delivered, by the Deputy Marshal, to irresponsible persons, who, in the twinkling of an eye, sent her in the stillness of the night, beyond the jurisdiction of the Court, and before the rising of the sun on the following day, before the Court assembled, or could even hear of the abuse of its authority, she was far out of reach; and the first intimation His Honor the Judge could gain of it, was the exulting notice of the barque Aldebaran in two of the morning newspapers, inserted there by Messrs. Mure and Chilton, who repaired in person, late the same night, to the different printing offices, to herald forth their exploit. The following from the Crescent City of Tuesday morning, the 29th April, is inserted as an example:

"The late Libel suit in Admiralty.—Yesterday evening the barque Aldebaran, Capt. Turner, went to sea under the command of her new Captain, having been released by Judge McCaleb. The decision seemed to give great joy to the crew, and the vessel left the Levee their cheering cry gave little response to the lachrymose speeches of the counsel of the displaced captain. All seemed well under the new arrangement, and we apprehend that no harm has been done any honest party.

PROCEEDINGS

Consequent upon the last mentioned order, and delivery of the vessel out of the possession of the Marshal, between 9 *and* 10 *o'clock, P. M., on Monday, the* 28*th of April,* 1845,

AGAINST

RICHARD HARRISON CHILTON, WILLIAM MURE, JOHN WINTHROP, JOHN CLAIBORNE and N. R. JENNINGS,

For Contempt of Court in aiding and abetting in the issuing said order.

AFFIDAVIT OF CAPTAIN YORK,

AFTER THE DEPARTURE OF HIS VESSEL.

Thomas Hunter Holderness, *vs.* British Barque Aldebaran. } United States District Court for the District of Louisiana.

William Broader York being duly sworn deposes and says, that he was the Commander of the British Barque Aldebaran, that the said vessel was seized and taken possession of by the Marshal of the United States for the District of Louisiana, under a process

of this Honorable Court on the twenty second day of April, 1845; that certain persons, at the instance of William Mure and Richard Harrison Chilton, took forcible possession of the said vessel, on Monday the 28th day of April, instant, in defiance of the authority of this Court, and of the remonstrance of William Sharron, the Deputy Marshal, or keeper, who had been appointed by the said Marshal to take care of said vessel, and who had her in charge, cut said vessel from her moorings and took her from the Levee in tow of the steam tow boat called the "Geneva," carrying off the sad Deputy Marshal or keeper. That soon afterwards J. P. Walden, another Deputy Marshal, procured the aid of the steam tow boat "Star," and brought the said barque Aldebaran, back to the Levee where she was met by Richard Harrison Chilton, Richard M. Carter, William Mure and John Winthrop, some or all of whom entered the cabin of the said barque Aldebaran with the said Walden; an order was presented to the said Deputy Marshal, or keeper, in words and figures following:

UNITED STATES OF AMERICA—EASTERN DISTRICT OF LOUISIANA.

The President of the United States of America, to the Marshal of the District of Louisiana, or to his lawful Deputy—GREETING:

WHEREAS, in the District Court of the United States, in and for the Eastern District of Louisiana, the Judge has this day issued the following order, to wit:

"Holderness vs. The Barque Aldebaran—The Proctor for libellant in this case has asked for an order to discontinue the libel. As there seems to be no reason why this order should not be granted, the Clerk will enter an order to that effect upon payment of costs."

Under this order of the Court, the barque Aldebaran, libelled by Thomas Hunter Holderness, has been released from seizure according to law, and the costs of suit up to this date having been paid, you are hereby commanded conformably to law, and the order of said Court, to cause the said barque Aldebaran to be delivered to the said Thomas H. Holderness, or his agent, and hereon make return.

{ L. S. } Witness, the Honorable THEODORE H. MCCALEB, Judge of the said Court, at New Orleans, this 28th day of April, A. D. 1845, and the 69th year of the Independence of the United States of America.

(Signed,) N. R. JENNINGS, Clerk.

That on the presentation of the foregoing order, the said Deputy Marshal, or keeper, delivered to the said Richard Harrison Chilton the said barque Aldebaran, for which he gave to the said Deputy Marshal, or keeper, a receipt in words and figures following:

ENDORSEMENT.

"New Orleans, April 28th, 1845. Received from J. P. Walden, Esq. in conformity of the within order of Court, the barque Aldebaran and cargo.

Costs in full to be paid to the Marshal.

$16 paid men."

(Signed,) R. H. CHILTON, Agent.

And that at the foot of which said receipt was added the following stipulation:

"All costs as charged by the Mashal, to be paid by J. Winthrop."

(Signed,) R. M. CARTER, Att'y.

That immediately after which the said barque was taken in tow of the steam tow boat called the "Shark," by order of the said Richard H. Chilton, who sent her for sea, beyond the jurisdiction of this Court, carrying off a great portion of the baggage of this deponent, and refusing to allow him time to take the same on shore; the said Chilton at the time being assisted by the said William Mure, and by the advice and counsel of the said John Winthrop.

This deponent further says, that he has been informed, and believes, that on the evening of the said twenty eighth day of April, the said Chilton applied at the office of the Clerk of this Honorable Court, accompanied by the said William Mure, John Winthrop, and John Claiborne, Esquires, and demanded of N. R. Jennings, Esquire, Clerk of the said Court, the

said order; that the same was filled up by the said John Claiborne, Esquire, and signed by the said N. R. Jennings, as Clerk, who caused the seal of this Court to be affixed thereto.

This deponent further says, that the suit in which the said vessel was seized, had not been discontinued, nor had the costs been paid, as he has been informed by the Clerks in the office of the Clerk of this Court, and believes, up to 2 o'clock, P. M. of the thirtieth day of April, instant.

(Signed,) WILLIAM BROADER YORK.

Sworn to and subscribed before me, this 1st May, 1845.

(Signed,) THEO. H. McCALEB,
U. S. Judge.

COPY OF RULE.

Thomas Hunter Holderness, *vs.* The British Barque Aldebaran. } District Court of the United States for the District of Louisiana. 2d May, 1845.

On the application of Jacob Barker of New Orleans, herein appearing as "*Amicus Curiæ*," it is, on filing the deposition of William Broader York, ordered, that a rule be granted commanding N. R. Jennings, the Clerk of this Court to appear on the 7th day of May, instant, at ten o'clock A. M. to answer a contempt of this Court, for issuing improperly, and causing the seal of the Court to be affixed thereto, an order in contravention to law, and the authority possessed by said Clerk, for the delivery of the British barque Aldebaran, under seizure and in the charge of the Marshal of the United States, to Thomas H. Holderness, or his agent, without any authority for so doing, and in contempt of this Court.

And also, at the same time and place, that Richard Harrison Chilton, William Mure, John Winthrop and John Claiborne, be also commanded to appear and answer a contempt of this Court, in aiding and procuring said order of said Clerk, and in interfering with the orders of this Court, by causing the said barque to be removed beyond the jurisdiction of this Court, as set forth in the said affidavit of William B. York.

(Signed.) THEO. H. M'CALEB,
U. S. Judge.

May, 7th, 1845.

The trial on the foregoing Rule, for contempt of Court was to have come up this day. The returns being exhibited, it was found that the Marshal had returned service on William Mure, Richard H. Chilton and John Claiborne—John Winthrop not in town. Messrs. Jennings and Claiborne appeared in Court and declared their readiness to answer.

Mr. Claiborne said that Mr. Winthrop was expected back in a day or two, and then *excepted to the jurisdiction of the Court over the British Consul*, intimating that the Court had no power to call upon him, to answer for any of his acts.

This the Court over-ruled, declaring its power to compel his attendance to answer; and saying that it (the Court) could not regard him in any other light than as a Commercial Agent.

Mr. Claiborne then said Mr. Mure will put in his answer.

Soon after which Messrs Mure and Chilton appeared in Court, but owing to the United States Circuit Court being in session, and having a press of business before it, the case was obliged to be postponed until the 19th

May, instant, when the parties were ordered to appear at 9 o'clock, A. M., and answer to the charge prefered against them.

The time being so distant when this investigation is to take place—the issue not being directly important to the elucidation of the wrongs of Captain York, (it being considered that the mere issuing the order by the Court calling upon men high in official stations, as well as legal and private relations, to answer for a contempt shewn to its mandates and authority, carries with it a sufficient vindication of the course pursued by Captain York); and the anxiety of many to be in possession of the facts of this case as far as they have gone, the compiler has thought proper here to close his labors, remarking, however, that other proceedings, in the course of preparation, of which he has been informed, will be resorted to in order to call upon those to atone fully for their conduct, in having been instrumental in depriving a young Captain of his command without justifiable cause, and of attempting to blast his fair fame.

The following affidavits, which have been sent before the Criminal Court as the ground work of other proceedings, are introduced here, so that the reader may be informed of every thing which has transpired up to the time of going to press.

AFFIDAVITS.

JOHN WIER, of Arbroath, Scotland, being duly sworn, deposes and says, that he is carpenter of the barque Agneda, of Grecnock, that he, at the request of William Hamlet Williamson, mate of the said barque, went on board the barque Aldebaran on Monday evening, the 28th day of April, 1845, to assist William Broader York, master of the said barque Aldebaran, in taking on shore his baggage; that deponent commenced handing the same from the said barque to the said Williamson, who was standing on the guard board of the "Agneda;" in the progress of which the said "Aldebaran" was suddenly taken off by the steam tow boat Shark, carrying witness with her; that on her passage down to the Balize many articles, said to be the residue of the baggage of Captain York were delivered to witness, who assisted in putting them on board the "Shark," consisting of two trunks, one chest, and one bed and bedding.

That soon after which a person on board the Aldebaran, who was acting as mate, and who this deponent was informed was the chief mate of the said barque Aldebaran, and who this deponent believes went by the name of James Scott—the crew addressed him by the name of Mr. Scott. That the said Scott then came to the side of said barque and ordered the said baggage to be returned from the steam tow-boat Shark to the Aldebaran, alleging that Captain York was indebted to him (Scott) in the sum of ten pounds, for which he would take the baggage; it was accordingly passed back to the Aldebaran, and was received by the second mate and passed in part or in whole to the said chief mate, who was in the cabin gangway, and who passed the same into the cabin; that in about a quarter of an hour the packages were all returned to the Shark, the two trunks and chest having had their locks forced open; that on arrival at New Orleans the said baggage was delivered to the said Captain York in the precise condition it was returned to the said Shark from the Aldebaran, according to the best knowledge and belief of witness, and furthermore this deponent saith not.

(Signed.) JOHN WEIR.

Sworn to and subscribed before me, this 5th day of May, A. D., 1845.

(Signed.) N. R. JENNINGS,
Clerk U. S. District Court.

WILLIAM HAMLET WILLIAMSON, of Port Glasgow, Renfrewshire, Scotland, being duly sworn deposes and says, that on Monday night, the twenty-eighth day of April, 1845,

Captain William B. York requested deponent to assist him in taking out his baggage and property from on board the barque Aldebaran, lying alongside the barque Agneda, of Greenoch, of which this deponent is mate; whereupon this deponent, accompanied by the carpenter of the said barque Agneda, then went on board the Aldebaran and asked Captain Turner to point out the baggage of Captain York. he (Captain Turner) went into the cabin with deponent and pointed them out, and while in the act of taking them on board the barque Agneda, aforesaid, the said barque Aldebaran was taken off by the steam tow boat Shark, carrying with her the carpenter of the said barque Agneda, together with most of the baggage of Captain York. That when he, this deponent, was coming out of the cabin with part of the baggage, James Scott met deponent and demanded to know who he, deponent, was, and where Captain York was? Saying "the d—d son of a b—h, he thought to get me out of the ship; but we have served him out;" and that then the said Scott ran and let go the stern line. That seeing the said barque Aldebaran swinging off, the deponent sprang on board his own vessel (the Agneda) and called to the carpenter to follow him, but he was not quick enough to get out. Deponent further saith, that said Scott (seeing him, deponent, beyond reach) called out to him, saying, "where are you now?—you had better come and take Captain York's things on shore."

(Signed.) W. HAMLET WILLIAMSON.

Sworn to and subscribed before me, this 6th day of May, A. D., 1845.

(Signed,) N. R. JENNINGS,
Clerk U. S. District Court.

William Broader York, of Hull, England, being duly sworn, deposes and says, that he was lately Master of the barque Aldebaran, that the said barque was forcibly arrested from his command and sent to sea; that finding Richard Harrison Chilton was determined to send the barque to sea, in defiance of all law and authority, on the twenty-eighth day of April, 1845, in tow of the steam tow boat called the "Geneva," he attempted to go on board to get out his baggage and property, when James Scott, mate of said barque, stood on the rail of said vessel, near the gangway, where there was a plank placed, leading from the wharf to the barque, in an attitude of defiance, and that while deponent was on said plank said Scott called out to those on deck, "shove the d—d son of a b——h overboard," and then with the assistance of some of the crew, the said Scott pushed the plank forcibly off the vessel; that deponent with difficulty gained the edge of the wharf, when immediately afterwards the said barque was taken off by the said steam tow boat "Geneva," carrying with her the keeper appointed by the United States Marshal, and who had her then in charge and under seizure; that the deponent and the said keeper both forbid all persons then and there concerned, not to take off said barque from her said moorings; that she was shortly afterwards brought back to the Levee, (alongside of the barque Agneda,) by the orders and direction of J. P. Walden, one of the deputy Marshals, who employed the steam tow boat "Star" for that purpose, and immediately after which the said barque Aldebaran was taken and sent to sea, taking with her a portion of deponent's baggage and other property, notwithstanding that this deponent used every exertion to get the same on shore, assisted by William H. Williamson, chief mate, and John Wier, carpenter, of the barque Agneda, which vessel was then lying alongside his said barque; that one of whom. to wit: John Wier, was taken off in the said vessel; that when the said steam boat "Shark" returned to New Orleans she brought back two trunks, one chest, and one bed and bedding, being a part of this deponent's property; that the locks of the said chest and trunks had been forced open, and the contents rifled of the following articles, the property of this deponent, and which cost deponent as near as he can recollect, the sums set opposite the name of each article, to wit:

	£	s.	d.
A full set of Charts,	10	16	0
Scale, dividors, and parellel rule,		14	0
One new invisible green wrapper,	4	0	0
A lot of Books. amongst which were works on navigation, and directions for sailing, &c., about	5	0	0
1 sextant,	10	10	0
1 silver watch,	4	0	0
1 new black cloth vest,	1	1	0
1 beaver hat,		18	0
A lot of shirts, under clothing and other wearing apparel, about	3	0	0
And that there was also taken other of his property in the cabin and about said vessel, viz:			
1 barometer,	2	17	6
1 writing desk and contents, about	12	0	0
Sundry articles about the cabin of various descriptions, about	5	0	0
2 pigs.	2	2	0

That according to the best of deponent's recollection and belief, the total cost of the aforesaid articles amounts to sixty-one pounds eighteen shillings and six pence, sterling, or about two hundred and ninety-seven dollars and twenty-four cents in federal money.

This deponent further says, that he has good reason for believing, and that he does believe that JAMES SCOTT, mate of the barque "Aldebaran," committed said theft.

This deponent further saith, that the said barque was taken off under the command of Benjamin Turner, and that Richard Harrison Chilton, William Mure, John Winthrop, and Richard M. Carter, were present, aiding and abetting in despatching the said barque.

(Signed,) WILLIAM BROADER YORK.

Sworn to and subscribed before me, this 6th May, A. D., 1845.

(Signed.) N. R. JENNINGS,
Clerk U. S. District Court.

ERRATA.

Page 20—After the words, Mr. B. here related the following anecdote, read "in illustration of the respect paid to individual rights, even in monarchial governments." &c.

APPENDIX.

SECTIONS XLVI and XLVII of the 7th and 8th Victoria, Cap. 112, quoted in the letter of H. B. M. Consul, on page 14, as his authority for superseding Captain York in the command of his vessel; to which is added the XLVIII section of the same act for the better information of all concerned.

SEC. 46. And whereas great mischiefs have arisen from masters of merchant ships leaving seamen in foreign parts, who have been thus reduced to distress, and thereby tempted to become pirates, or otherwise misconduct themselves, and it is expedient to amend and enlarge the law in this behalf; be it therefore enacted; That if any master of a ship belonging to any subject of Her Majesty shall discharge any person belonging to his ship or crew, at any of Her Majesty's colonies or plantations, without the previous sanction in writing (to be endorsed on the agreement) of the Governor or other officer holding the chief authority there, or of the Secretary or other officer duly appointed by the Government there in that behalf, or in the absence of such functionaries then of the chief officer of customs resident at or near such port or place, or shall discharge any such person at any other place abroad without the like previous sanction, to be so endorsed on the agreement by Her Majesty's Minister, Consul, or Vice Consul there, or in the absence of any such functionary then of two respectable merchants resident there, such Master shall be guilty of a misdemeanor; or if any Master of any such ship shall abandon or leave behind at any such Colony or Plantation any person belonging to his ship or crew, on the plea or pretence of unfitness or inability to proceed upon the voyage, or of desertion or disappearance from the ship, without a previous certificate in writing (to be endorsed on the agreement) of the Governor, Secretary, or other officer as aforesaid, or in the absence of such functionary, then of the chief officer of customs resident at or near such port or place, certifying such unfitness, inability, desertion or disappearance, or shall abandon or leave behind any person belonging to his ship or crew at any other place abroad, on shore or at sea, upon such plea or pretence, without the like previous certificate from Her Majesty's minister, consul, or vice consul there, or in the absence of any such functionary, then of two respectable merchants, if there be any such at or within a reasonable distance from the place where the ship shall then be, such Master shall be guilty of a misdemeanor; or if any Master of any such ship, in case any person belonging to his ship or crew shall desert from the said ship at any place abroad shall neglect to notify the same in writing to one of such functionaries as aforesaid, if there be any such resident at or near the place, and in their absence, if it be out of Her Majesty's dominions, then to two

respectable merchants, if there be such at or near the place, within twenty-four hours of such desertion, such master shall be guilty of a misdemeanor; and the said functionaries are hereby authorized and required, and the said merchants are authorized, to examine into the grounds of such proposed discharge, or into the plea or pretence of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, upon oath, (which oath they are hereby respectively authorized to administer,) and to grant or refuse such sanction or certificate according to the circumstances, and as it shall appear to them to be just.

Sec. 47. And be it enacted, That if the Master of any ship belonging to any of her Majesty's subjects, or the mate or other officer of such ship, shall wrongfully force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in or out of her Majesty's dominions, any person belonging to his ship or crew, before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom, such Master, Mate or other officer shall be guilty of a misdemeanor; and every misdemeanor mentioned or created by this act shall and may be prosecuted by information at the suit of Her Majesty's Attorney General, or by indictment or other legal proceeding in any Court having criminal jurisdiction in Her Majesty's dominions at home or abroad; and the offence may be laid and charged in the said information, indictment or other legal proceeding to have been committed in the county or place where the offender shall happen to be, who, being convicted thereof, shall be liable to fine or imprisonment, or both, as to the Court before whom he is tried shall seem meet; and every court is hereby authorized to issue a commission or commissions for the examination of any witness or witnesses who may be absent or out of the jurisdiction of the Court; and at the trial of the depositions taken under such commission or commissions, if such witness or witnesses shall be then absent, shall be received in evidence.

XLVIII. And be it enacted, That if any Master shall, contrary to the provisions of this act, discharge, abandon, or leave behind any seaman or other person belonging to the ship or crew, with or without his consent, it shall be incumbent on such Master, in any information, indictment, or other proceeding against him, to produce or prove such sanction or respective certificate as aforesaid, or prove the impracticability of obtaining such certificate.

EXTRACTS FROM NEWSPAPERS PUBLISHED IN THE CITY OF NEW ORLEANS.

From the Jeffersonian Republican of Thursday morning, April 17, 1845.

SINGULAR AFFAIR.

Captain York, who came to this port in charge of the British bark Aldebaran, appeared yesterday before Recorder Lewis, to answer the complaint of Mr. R. H. Chilton, as contemplating a breach of the peace. It seems that in consequence of some misunderstanding, the complainanant

had, through the agency of the British Consul at this port, sought to deprive Captain York of his command—the Consul naming another commander. Captain York resisted, and manifested his determination to retain his position on board the Aldebaran by the laws of the United States. The question raised before his Honor was, whether the Consul of a foreign power has the right to control private property belonging to subjects of the nation he represents, to the extent of depriving the captain of a vessel of his command, without any visible misconduct on the part of the latter. Mr. Chilton appeared to sustain his charge, and Jacob Barker, Esq., in behalf of Captain York. Recorder Lewis, after hearing some testimony, postponed further consideration of the subject to this day, at noon.

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From the New Orleans Bee of Thursday, April 17, 1845.

A novel case in our Courts, came off yesterday before Recorder Lewis. From what we can learn of the case, it appears that during the passage of the British barque Aldebaran, Captain York, from Liverpool to this port, the chief mate, Scott, was, in consequence of disorderly conduct, displaced by order of the Captain. Upon the arrival here of the vessel, a person named Chilton, representing himself as the Agent of the supposed owners of the vessel, called upon the British Consul and requested Captain York should be deposed from command and another captain appointed, which was done by the Consul—the Consignees of the vessel, Messrs. Gordon, Wylie & Co., denying Mr. Chilton's right of agency, and protesting against the action taken by the Consul.

Upon Captain York's going on board of his vessel, he was informed that unless he left immediately, he would be placed under arrest. Upon his refusal to go on shore he was arrested by the officers of the Third Municipality police, and thrown into prison, from which he was shortly released on bail. The examination of the case, which commenced yesterday, was continued over until to-day. Jacob Barker, Esq., appears as Counsel for Captain York.

The question at issue is, whether a Consul has a right to depose a captain of a vessel, against the will of the consignees.

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From the Jeffersonian Republican of Friday, April 18, 1845.

THE STATE *vs.* WILLIAM B. YORK.

Recorder Lewis resumed the examination of this case yesterday, when John Winthrop, Esq., accompanied by the British Consul, appeared on behalf of the prosecutor. Messrs Barker and Latour for the defendant. At the commencement of the proceedings, a point was raised by the defendant's counsel, claiming right the of cross-examining the prosecutor. Mr. Win-

throp insisted that the prosecutor, having made the affidavit, had complied with all the requirements of law, and could not be forced to support his allegation by being questioned further. This objection was overruled by the Court.

The whole of the examination then turned upon questions as to the real ownership of the Aldebaran, and if these owners had, or had not, given to Mr. Chilton the power which he contends he has, to act as agent of the vessel. This question was investigated at large, and finally postponed until this day, for Mr. Chilton to produce certain letters, in which he contends such authority to him is given. So far as the evidence has gone, the only business or commission which appears to have devolved on Mr. Chilton is, the responsibility of *advising* Captain York in reference to the purchase of an "OLD FLAT BOAT" to break up for dunnage. The affidavit sets forth that Mr. Chilton, as agent, feared that Captain York, coming on board his own vessel, might commit a breach of the peace, he having been deposed from such command by authority of the British Consul, for alledged misconduct; but what the nature of that conduct is, has not transpired as yet.

~~After the adjournment had taken place,~~ Mr. Mure, the British Consul, requested permission to address the Court—not in reference to this particular case however, only so far as his name as Consul had been mixed up with it. This was granted.

Mr. Mure then defined his position as Consul, and went on to inform the Court as to the extent of his authority as regards British subjects; and particularly the captains, sailors and apprentices. He contended that he was not amenable to the laws of the United States for any of his official acts, that the laws of England gave him sovereign authority; and, that it was more an act of clemency on his part, than otherwise, that he had not dealt with Captain York more harshly; that his authority over refractory commanders of British vessels, was the same as it was over mates, seamen, and apprentices! and that Great Britain did not make one law for the captain and another for the sailor. He concluded by saying something to the effect that for his official acts he held himself responsible to his government at home; but that he could recognize no authority to call him into question here.

The expression of some of Mr. Mure's views caused a great sensation in the Court; and once, during the asservation of such powers being vested in him, he was interrupted by the overstrained feelings of Mr. Latour, who gave vent to them in a few thrilling remarks in opposition to such sentiments. Mr. Barker wished the Consul not to be interrupted, and when he had concluded, desired to reply; but as this was no part of the case, he desisted, and will reserve his remarks for the closing argument.

The utmost excitement was manifested by the thronged Court for the decision of this case, which we suppose will be concluded to-day.

From the Jeffersonian Republican of April 19, 1845.

STATE *vs.* WILLIAM B. YORK.—THIRD DAY.

Recorder Lewis, at the hour appointed yesterday, resumed the investiga-

tion of this case; after waiting a considerable time for the appearance of the prosecutor, his counsel, or the British Consul, but neither of them appearing, his Honor determined to go on with the case, as the prisoner and his counsel were in attendance.

The Recorder in the commencement stated that inasmuch as the question of authority had arisen in the necessary investigation of this case, that he should have to pass upon it; but in doing so he wished it to be clearly understood, that whatever his decision might be, that it was not intended to interfere with the rights of either party.

Mr. Barker, for the defendant, produced several documents in relation to the case, which were filed and form a part of the record; these comprise, among other things, an interesting correspondence with the British Consul.

Several British ship-masters were then examined on behalf of Captain York, who all testified to his peaceable deportment and ability as a commander; during the examination of one of whom, Mr. Chilton made his appearance, and stated as a reason for not producing his authority to act as agent, (required of him on Thursday) was a supposition that a compromise, for which negotiations had been pending, would supersede the necessity for further proceedings.

The prosecutor did not seem to be aware of the difference between a prosecution on the part of the public and that on the part of individuals. This is a State prosecution, on the affidavit made by Mr. Chilton, and the law does not allow of compromises in such matters.

In all criminal prosecutions, those complained of have only to defend themselves. The counsel for Captain York expressed an earnest desire that the full time should be given to the prosecutor to produce every thing pertaining to his authority.

It is important, said Mr. Barker, that the record should exhibit the whole story, and spoke at some length in an able manner, contending that his client was on his defence, and should have a speedy deliverence. He further stated that the record of these proceedings would be sent to England to refute or explain the statement which, as was understood from Mr. Chilton, had already gone from the other side to the British Minister at Washington, therefore he, Mr, B., did not complain of this suit going on, pending the negotiation for a compromise of other matters, and thought it did not become the prosecutor to find fault with the exertions of his client to get out of prison, where he had been incarcerated with the lowest of this community, or to be released from the bonds given to answer this charge.

The Court finally allowed further time for Mr Chilton to produce his letters, and for that purpose adjourned the case to one o'clock this day.

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From the New Orleans Bee of April 19, 1845.

RECORDER LEWIS' COURT.

STATE *vs.* WILLIAM B. YORK. — THIRD DAY.

Yesterday morning the Recorder resumed the examination—but neither

Mr. Chilton, his counsel, or the British Consul made their appearance in Court, though an hour was spent waiting for them.

The Recorder stated in resuming the case, that inasmuch as the question of ownership and the accredited agency of the barque Aldebaran, had been brought up in the investigation, it was incumbent upon him to decide whether Captain York was justified or not, in the course he had pursued, but in so doing, he wished to be clearly understood, that he did not wish to interfere with the rights of either parties.

Mr. Barker opened the case for Captain York, and filed several documents in relation to it—after which he called several captains of British vessels to testify as to the conduct of Captain York.

These witnesses with singular unanimity, all concurred in giving the prisoner an excellent character, his peaceable deportment and good management as a commander; and also, testified to the abusive conduct of Scott, his mate, to him while in port, and through whose representations the British Consul superseded Captain York, and placed *him* in command. (This same man has since been reduced to mate, and another person appointed as captain.)

During the examination of these witnesses, Mr. Chilton made his appearance, and gave as a reason for his non-attendance, that he thought a compromise, which had been proposed to Captain York, would supersede the necessity of further proceedings, and that was also a reason why he did not produce the letters required of him.

Mr. Barker expressed a wish that ample time should be given for their production, and at the same time went on at length to show that no compromises could be entered into to intercept criminal prosecutions, and urged the case to be proceeded with in a legal manner, that full justice should be done to his oppressed client, who had been incarcerated with felons and drunkards, and was still under bonds to appear and answer the complaint of this pretended agent; but at the same time desired every opportunity to be given to the other side to produce all the evidence in their power.

The Court then adjourned the case to one o'clock this day—when the arguments of counsel will be heard and the case no doubt disposed of.

The Court was crowded to excess.

This case in its present bearings presents one seldom heard of in this country, and we trust never will again. A master of a vessel has reason to complain of his mate—he does so—the mate rejoins and complains of the Captain. Mr. Chilton pretends that he has authority to act as agent of the vessel—but pertinaciously withholds the proof—makes a complaint to the Brit'sh Consul, who forthwith, without any ceremony displaces Capt. York—and places his disobedient mate in command, who in his turn applies the most abusive epithets to his lawful commander—the commander seeks for advice, being a young man, and his first voyage in that capacity, i. e. to maintain those rights given him by his owners, and which have never been countermanded, is arrested on a warrant under the *fears of Mr. Chilton—that in exercising that authority given him by the laws of nations—he will commit a breach of the peace.* Then in order to establish such proof being called upon for his authority, he withholds it upon the plea that the letters con-

taining it, relate also to other matters, together with other frivolous excuses—during all which time the oppressed defendant and his friends are compelled to dance attendance upon a police court, and then sought to enter into compromise—the end of which would place him again on board his vessel to go home, if the proposition of the British Consul were acceded to, for further persecution.

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From the Jeffersonian Republican of Monday, 21st April.

STATE vs. WM. B. YORK—FOURTH AND LAST DAY.

Recorder Lewis at the hour appointed on Saturday, resumed the examination, neither the prosecutor, his counsel, or the British Consul made their appearance, consequently Mr. Chilton's authority was again minus. It is proper to state here that some time during the morning Mr. Chilton made application to the Recorder, to *permit him to withdraw his affidavit and dismiss the case.* This His Honor very properly refused on the grounds that Mr. Chilton having made an affidavit against the person of an individual, on behalf of the peace and dignity of the State of Louisiana, must go through and prove, or fail to prove his allegation; and next, that no dismissal could take place without the presence of, or consent of the accused, who had demanded a thorough investigation.

Mr. Barker, for accused, called on Edward Mason, the second mate of the barque Aldebaran, to produce the log-book of the vessel—this witness was then sworn, and testified that the record of the incidents and facts contained in the log book were written by him. Those entries made in the log book having particular reference to the misconduct of James Scott, the chief mate, on Thursday, 27th February; Sunday, 2d March; and Thursday, 13th March, last, are in his hand writing, and were signed by the Captain, now copied on the record of the Court. The entries on the log-book were sometimes not made up from the slate on the days they bear date, but as soon as he had time afterwards, sometimes a day or two.

Here Mr. Scott, Mate of the Aldebaran, was permitted to cross-examine the witness, who stated that "what is written in the log by me *is not true*, according to my notion."

Mr. Barker requested him to look at the log-book particularly, and point out those points which he, the witness, considered untrue, he did so, and pointed out one or two immaterial errors in the account he had written of what happened after the arrival of the vessel in port, and which had a tendency to contradict his answer to Scott. The witness being further questioned, stated that he had looked carefully, *and particularly so at the day's work copied in the record of this case*, and could not find any other errors in the log-book; the witness then recognized two keys produced by Capt. York, as belonging to the doors of rooms in the cabin of the vessel, after which nothing of importance was elicited.

Captain Frazer, of the British barque Pollock, being sworn, stated that he was present when Captain York was arrested, and accompanied him

to, and saw the persons with whom he was incarcerated in the calaboose —he also corroborated the evidence of others, as to the good conduct of Capt. York, and the good condition of the vessel.

Mr. Verin, chief mate of the British ship Bradshaw, was also offered as a witness to prove the intemperance of Mr. Scott, the deposed mate, who it had been attempted to appoint Captain of the Aldebaran, over the head of Captain York—but the Court not deeming this testimony immediately applicable to the case, ruled it out.

Mr. Barker then addressed the Court in behalf of the accused; for whose speech see page 17.

The Court, in a very few moments, delivered the following judgment: "There being no just cause of apprehension of an intention, on the part of the accused to commit a breach of the peace proved in this case, the complaint is therefore dismissed, without prejudice to the rights of the parties.

The Court was very crowded, and we must say we never saw more warmhearted sympathy expressed for any man than did Captain York's brother ship masters feel for him, and we trust in a few hours, to see the Captain proudly walking his own deck in compliance with his rights, his instructions, and strict justice.

From the Captain and Seaman's Advocate, May 4, 1845.

JACOB BARKER'S SPEECH,

IN DEFENCE OF SAILOR'S RIGHTS.

The trial of Captain York, of the barque Aldebaran, occasioned very great interest for several days, and elicited much talent, ingenuity and research from learned counsel, from whose efforts we select the speech of Jacob Barker, Esq., (as reported for the Jeffersonian Republican) and claim for it the attention of maritime men, as peculiarly addressed to their interests. It is a masterly defence of Captain York, and by its force and irresistible reasoning, must have broken down the bulwarks of opposition, had not Captain York been guarded by a defence stronger than cuirass of steel—his innocence of the charge alleged against him, and the full performance of his duty, as evidenced in Court. Every captain, every sailor should be in possession of this soul stirring and eloquent speech. The reference made by the venerable advocate, to the spring-time of life, when the blue-jacket and tarpaulin were familiar things to him, is calculated to bring a tear to the eye of many an "old salt." Subordination on board ship must exist, or discipline is gone, and the vessel might as well be sent adrift in a gale without a rudder. Every man should know his duty and then do his duty. It should be remembered by each individual that, he does not alone hold his own life in his hands, but upon him depends the lives of his messmates, his captain and all who sail beneath his flag. The wild ocean is no tame and gentle plaything, and danger lurks beneath every wave. One wrong step and all is lost. Then the responsibilitity of every individual from the captain to "the man before the mast," is incalculable. That the master of the Aldebaran did his duty, we feel convinced, and to convince others, beg to refer to Mr. Barker's speech.

Pamphlets.

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